

(Translated from Arabic)

Permanent Mission of Kuwait to the United Nations Office at Geneva

Geneva, 11 February 2016

M 89/2016

Subject: Joint communication AL KWT 7/2015 dated 17 December 2015

1. We should first like to reaffirm that the right to human dignity is fully respected in the State of Kuwait. Article 29 of the Kuwaiti Constitution states that: "The people are equal in terms of human dignity." Article 31 of the Constitution stipulates that: "No person may be arrested, detained, searched, have his place of residence specified or have his freedom of residence or movement restricted save in accordance with the law. No person shall be subjected to torture or to degrading treatment." In addition, article 34 guarantees the following protection under the Constitution: "An accused person is presumed to be innocent until proven guilty in a court of law in which the requisite guarantees for exercising the right of defence are secured."

2. In keeping with these principles, article 184 of the Criminal Code (Act No. 16 of 1970) stipulates that: "Anyone who arrests, imprisons or detains a person in circumstances other than those permitted by law, or without following the legally prescribed procedures, shall be punishable with a maximum term of imprisonment of 3 years and/or with a fine of not more than 225 dinars. If such acts are combined with physical torture or a threat to kill, the penalty shall be a maximum term of imprisonment of 7 years, to which may be added a fine of not more than 525 dinars." This approach was underscored in Act No. 31 of 1970 amending Criminal Code No. 16 of 1960. The amendments focus on civil servants and law enforcement officers. Thus, article 53, as amended, stipulates that: "Any civil servant or official who, in person or by instructing others, is responsible for the torture of an accused person, a witness or an expert with a view to inducing them to confess to an offence or to make statements or provide information thereon shall be punishable with a maximum term of imprisonment of 3 years and/or with a fine of up to 500 dinars. If the torture leads to, or is combined with, an act carrying a heavier legal penalty, the penalty for the said act shall be imposed. If the torture proves fatal, the penalty shall be that prescribed for intentional homicide."

3. We wish to reiterate that article 34 of the Constitution stipulates that: "An accused person is presumed to be innocent until proven guilty in a court of law in which the requisite guarantees for exercising the right of defence are secured."

4. It is evident from the foregoing that the information provided by your source is entirely incompatible with the laws and regulations applicable in the State of Kuwait.

5. With a view to providing a meticulous clarification of the circumstances, we wish to draw attention to the following response to your questions provided by the Ministry of Justice of the State of Kuwait:

It is clear from case file No. 84/2013 that the Criminal Enforcement and International Cooperation Department determined that the aforementioned convicted person (Abdullah Fairouz Abd al-Kareem) lodged a complaint with the Public Prosecutor's Office against the Undersecretary of the Ministry of the Interior and the Assistant Undersecretary of the Ministry of the Interior for Citizenship Affairs, in their official capacity, requesting that legal action should be taken against them for deliberately failing to implement a

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judgment pursuant to article 58 bis of Act No. 31 of 1970 amending certain provisions of the Criminal Code. He stated that he had already brought case No. 496/2006/Administrative/4 against them for failing to provide him with a certificate of Kuwaiti citizenship despite the fact that he was a Kuwaiti national entitled to Kuwaiti citizenship pursuant to two final rulings handed down in case No. 406/2000/Descent Status/10 and case No. 745/2001/Personal Status/22. At a sitting on 26 October 2008, the Administrative Division of the High Court ruled that the case was admissible in form and decided, in substance, to annul the negative decision whereby the defendants decided, in their official capacity, to refrain from issuing the plaintiff with a certificate of Kuwaiti nationality and, in light of that ruling, to issue him with a certificate. At a sitting on 30 May 2012, the Court of Cassation decided in a ruling on appeal case No. 333/2011/Administrative/1 to endorse that judgment.

He added that he had previously brought case No. 385/2010/Administrative/6 against the Undersecretary of the Ministry of the Interior, in his official capacity, requesting annulment of the decision to withdraw and invalidate his Kuwaiti passport (because he had acquired the passport pursuant to the judgment handed down in Administrative Cassation Appeal No. 982/2005 relating to case No. 270/2003/Administrative/9). The Administrative Division ruled that the case was admissible in form but not in substance. He appealed against that ruling in appeal No. 529/2011/Administrative/1. At a sitting on 20 January 2013, the court ruled that the appeal was admissible in form and decided, in substance, to annul the judgment appealed against. It also decided that the case was admissible in form and decided, in substance, to revoke the decision appealed against and its impact as set forth in the grounds invoked.

Finally, he brought case No. 2363/2012/Administrative/9 against them with a view to annulling their decision to refrain from implementing the above-mentioned judgments, inasmuch as they issued two new administrative decisions that infringed the annulment rulings and refrained from issuing him with a certificate of Kuwaiti citizenship and a passport. At a sitting on 14 May 2013, the Administrative Division of the High Court ruled that the case was admissible in form and decided, in substance, to annul the two decisions appealed against and their impact as set forth in the grounds invoked.

The following information stems from a communication by the Ministry of the Interior:

Article 2 of Amiri Decree No. 15 of 1959 on nationality, as amended, states that anyone born in Kuwait or abroad to a Kuwaiti father is a Kuwaiti. Article 19 requires the head of the Police and Public Security Departments of the Ministry of the Interior to issue a certificate of Kuwaiti nationality to every Kuwaiti after investigating the legitimacy of the claim to nationality. On applying the two articles to the case of the aforementioned convicted person, it was discovered that his claim of descent from the late Fairouz Abdullah Abd al-Kareem was unsound for the following reasons:



[REDACTED]

At a sitting on 15 October 2009, the Court of Cassation decided in appeal case No. 306/2008/Personal Status/2 to annul the judgment appealed against and to declare the judgment in appeal case No. 406/2000/Descent Status/10 and its consequences null and void.

[REDACTED]

The Minister of the Interior has provided the following information regarding the judgments in the cases brought by the convicted person:

- The heirs of the late Fairouz Abdullah Abd al-Kareem brought case No. 1212/2013/Administrative/4 against the convicted person, the Ministry of the Interior, and the Head of the Directorate General for the Enforcement of Civil Judgments, requesting that the judgment of the Court of Cassation handed down in appeal case No. 333/2011/Administrative/1 concerning case No. 496/2006/Administrative/4 be declared null and void, [REDACTED]
- The Ministry of the Interior lodged appeal No. 1570/2013/Administrative/3 against the judgment handed down in case No. 2363/2012/Administrative/9. The heirs of the late Fairouz Abdullah Abd al-Kareem also lodged appeal No. 1573/2013/Administrative/3 against the same judgment.
- The Ministry of the Interior lodged Court of Cassation appeal No. 234/2012/Administrative/1 against Court of Appeal judgment No. 529/2011/Administrative/1 handed down in case No. 358/2010/Administrative/6. The implementation of the Court of Appeal judgment was suspended pending a ruling on the subject matter of the appeal.

The following information concerns the cases that have given rise to disputes:

With regard to case No. 1212/2013/Administrative/4, it was decided on 24 November 2013 to dismiss the case because the administrative decision had been annulled. Administrative Appeal No. 2701/2013 was lodged against that judgment and the case is still pending.

With regard to Administrative Case No. 385/2010, an appeal was lodged with the Court of Cassation against judgment No. 234/2013 handed down by the Court of Appeal. The Court of Cassation decided to suspend the implementation of the judgment appealed against pending a ruling on the appeal. The case is still pending.

With regard to Administrative Case No. 2363/2012, an appeal was lodged against the judgment in Administrative Appeal Cases Nos. 1570/2013 and 1573/2013. At a sitting on 23 December 2014, the court ruled that the appeals were admissible in form but it decided, in substance, to dismiss them and endorse the Appeal Court judgment. On 19 January 2015 an appeal was lodged against the Appeal Court judgment in Court of Cassation Case No. 101/2015, which is still pending.

It may be concluded from the foregoing that the convicted person has not yet obtained Kuwaiti citizenship, that a number of administrative cases are still pending and that no final judgments have yet been handed down.

6. Citizenship is a legal relationship between individuals and the State, and is one of the core issues and acts pertaining to State sovereignty. The State has full authority to determine who should obtain citizenship and to impose whatever constraints and restrictions it sees fit on its citizens, inasmuch as it affects the structure of the population and political and economic life. Every State is entitled to preserve its freedom to enact legislation governing citizenship, which should be respected and implemented by all parties. In this context, article 13 of Kuwait Nationality Act No. 15 of 1959 permits the withdrawal of Kuwaiti nationality by decree, based on a proposal by the Ministry of the Interior, from a person who has acquired Kuwaiti nationality in a number of cases: if a person was granted Kuwaiti nationality by means of fraud or on the basis of false statements; if a person threatens the best interests of the State or State security; or if there is evidence that a person has propagated principles that are likely to undermine the country's economic or social system.

We have established, by means of the foregoing points, that the authorities in the State of Kuwait did not treat the person concerned in a discriminatory manner, inasmuch as the specific legislation governing citizenship is applied to everybody, including the person concerned. Having reviewed all the circumstances, using case numbers, we may summarize the issue by noting that the person's family, that is to

[REDACTED]. **Following deliberations in the courts, the Court of Cassation ruled, at its sitting on 15 October 2009, that the**

[REDACTED].

We therefore reaffirm that responsibility for all aspects of the issue lies with the courts, in accordance with the relevant legislation, and that the authorities of the State of Kuwait have no role to play. It follows that the allegation that the State authorities have treated the person concerned in a discriminatory manner is inconsistent with the facts laid out above, especially since the aforementioned citizenship issue has been deliberated before the courts since 1982. There have been no new developments that would indicate that the authorities in the State of Kuwait have recently behaved in a discriminatory manner against the background of his case. On the contrary, he is the subject of a

7. With regard to the question concerning the cases in which Abdullah Fairouz Abd al-Kareem was sentenced to imprisonment and the propriety of the material that he disseminated:

1. Case No. 18/2013 on control of State security (18/2013/State Security Felonies):

It may be concluded from a review of the case that the Office of the Public Prosecutor, having charged the accused, Abdullah Fairouz Abd al-Kareem, with publicly contesting the rights and authority of the Amir, defaming his person, disparaging the basis on which he holds office, and deliberately misusing means of telecommunication to disseminate the comments referred to in the case file through his two social media (Twitter) accounts, called for the imposition of the penalties prescribed in article 25 of Act No. 31 of

1970, amending various provisions of the Criminal Code, and article 1 of Act No. 9 of 2001 concerning the misuse of telecommunication and eavesdropping equipment. At a sitting on 9 January 2014, the criminal court sentenced him to a prison term of five years with hard labour and ordered his deportation from the country on completion of his sentence. The person in question lodged appeal No. 304/2014/Misdemeanour Investigations/7 against the judgment. At a sitting on 5 June 2014, the Criminal Appeal Court ruled that his appeal was admissible in form but not in substance and upheld the sentence, which thus became final. The convicted person is currently serving his sentence in the Central Prison run by the Directorate General of Correctional Institutions of the Ministry of the Interior.

2. With regard to the reduction on appeal of the sentence to 2 years and 6 months pursuant to the ruling delivered on 24 December 2014 in case No. 297/2013/Kuwait City (37/2013/ Misdemeanour Investigations):

It may be concluded from a review of the case that the Office of the Public Prosecutor charged the accused, Abdullah Fairouz Abdullah Abd al-Kareem, with using a social media website (Twitter) on the Internet in a manner that failed to show due respect for two judges, the Chairman of the Supreme Judicial Council and Ayman Abdullah Al-Azzaz, a High Court judge, inasmuch as the tweets referred to in the case file cast doubt on the judges' impartiality, professional diligence and compliance with relevant legal provisions. The Office of the Public Prosecutor requested the imposition of the penalty prescribed in article 147, paragraph 1, of the Criminal Code. He was sentenced to a prison term of two years with hard labour and a fine of 150 dinars for the charge brought against him and was ordered to pay a fixed amount of 5,000 Kuwaiti dinars in damages to the civil plaintiff. He lodged appeal No. 685/2013 against the judgment and the Misdemeanours Appeal Court ruled, at a sitting on 24 December 2014, that his appeal was admissible in both form and substance and, accordingly, commuted his sentence to a prison term of six months with hard labour and a fine of 150 dinars for the charge brought against him, while upholding the judgment in the civil lawsuit. This sentence will be served immediately after completion of the sentence imposed in the case referred to in section 1 above, in accordance with article 221, paragraph 1, of the Code of Criminal Procedure, which requires multiple prison sentences to be served consecutively.

8. The person concerned has thus appeared before the courts in connection with several different cases, not just the case in which he was charged with publicly contesting the authority and rights of the Head of State, defaming his person and disparaging the basis on which he holds office. We demonstrated this in our coverage of other cases in which he was convicted, for instance in case No. 297 concerning the defamation and disparagement of the judiciary by casting doubt on the impartiality of the Chairman of the Supreme Judicial Council of the State of Kuwait and of a High Court judge (Judge Ayman Abdullah Al-Azzaz).

9. We wish to underscore that the procedure followed in the case of Mr. Abd al-Kareem is fully compatible with international legal norms, inasmuch as the acts of contesting the rights and authority of the Amir, defaming his person, disparaging the basis on which he holds office, and disseminating such comments through the communication media and social media websites (Twitter) are deemed to constitute calls to spread anarchy, indirect calls to overthrow the Government and to demolish the pillars of the Constitution approved by the people, as well as calls to undermine security. Article 12 of the International Covenant on Civil and Political Rights explicitly states that: "The above-mentioned rights shall not be subject to any restrictions **except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others.**" A public call through social network sites and the media that casts doubt on the powers and functions of the Head of State, that contests his authority, defames his person, and disparages the basis on which he

holds office certainly constitutes a breach of public order. We reaffirm that contesting the rights and authority of the Head of State, defaming his person, disparaging the basis on which he holds office, and casting doubt on his powers, which were acquired with the approval of the Kuwaiti people as a whole and which are enshrined in the country's Constitution, is tantamount to a call for national violence to bring down the Head of State and to disparage the basis on which he holds office. This constitutes a breach of the letter and spirit of international human rights law.

10. The legislation on which the judgment was based is in no way incompatible with the provisions of international law, inasmuch as article 12 of the International Covenant on Civil and Political Rights states that the rights enshrined in the Covenant shall not be subject to any restrictions except those **which are provided by law** and "are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others". As we noted, the judgment that was handed down was based on legislative provisions. Moreover, as already noted, casting doubt on the powers of the Head of State, challenging his constitutional rights, defaming his person, and disparaging the basis on which he holds office are acts that are punishable by law with a view to protecting security, public order, and the rights and freedoms of others. The judgment is thus in conformity with article 12 of the International Covenant on Civil and Political Rights. We also reaffirm that casting doubt on the powers of the Head of State, contesting his authority, defaming his person, disparaging the basis on which he holds office, and dissemination thereof through means of telecommunication and social media websites (Twitter) constitute acts aimed at subverting public order, undermining national security by breaching the country's Constitution, which specifies the powers of the Head of State, and violating the rights of others. Furthermore, article 11 of the Universal Declaration of Human Rights stipulates that: "No one shall be held guilty of any penal offence on account of any act or omission **which did not constitute a penal offence, under national or international law, at the time when it was committed.** Article 22 of the Universal Declaration of Human Rights stipulates that: "**In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.**" Moreover, the levelling of unsupported charges and personal insults against a judge in the performance of his duties constitutes a violation of the judge's rights and a breach of existing rights and freedoms.

11. **We have demonstrated in the preceding paragraphs and in the entire content of this communication that the country's legislation is consistent with the relevant provisions of the Universal Declaration of Human Rights and with relevant international legal instruments ratified by the State of Kuwait. We have also demonstrated, by citing the provisions and numbers of national laws and comparing them with articles of the Universal Declaration of Human Rights and other relevant international provisions, that the national provisions and laws in question are consistent with relevant international human rights law.**

12. With regard to articles 19 and 22 of the International Covenant on Civil and Political Rights, we wish to make the following points:

The opinion expressed through the communication media and social media websites (Twitter) was not just an expression of opinion and not just an opinion that jarred with the policy pursued by the Government of the State of Kuwait. The opinion slandered the Head of State, defamed his person, cast doubt on the powers of the Head of State and contested his constitutional rights, thereby challenging the State Constitution and the laws in force. It also cast doubt on the impartiality of the judiciary without any supporting evidence. The State of Kuwait is one of the few States in the region with a written Constitution approved

by the people. It is also one of the few States in the region with a free Parliament. The expression of views that are not in line with the policy pursued by the Government does not constitute an offence. The rapporteurs can review the coverage of criticism of diverse Government policies in the media and the press. This is the democratic approach customarily adopted by the people of Kuwait. The question raised here, however, transcends the issue of criticism of the Government's policy!

We fully agree that criticism of the Government's policy is covered by article 19 of the Universal Declaration of Human Rights. As already noted, however, the issue raised here transcends that of criticism of the Government. Defaming and slandering the Head of State, and challenging the Constitution and the legislation in force by contesting the rights of the Head of a constitutional State implicitly encourage the spread of anarchy by undermining the foundations of governance. Hence the issue falls under article 29, article 2, of the Universal Declaration of Human Rights, which stipulates that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

We also fully agree that the expression of one's views, including those that clash with the policy pursued by the Government, falls under article 19, paragraph 2, of the International Covenant on Civil and Political Rights. However, as already noted, the issue raised here transcends the expression of views on the Government's policy inasmuch as it involves personal defamation and slander of the Head of State, and challenging of the Constitution and the legislation in force by contesting the rights of the Head of a constitutional State. It therefore falls under article 19, paragraph 3, of the International Covenant on Civil and Political Rights, which stipulates that: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are **provided by law** and are necessary: (a) For respect of the rights or reputations of others; (b) **For the protection of national security** or of **public order (ordre public)**, or of **public health or morals.**"

13. With regard to the question regarding the deportation of the person concerned on completion of his sentence, it should be noted that article 66 of the Criminal Code prescribes penalties for persons convicted under articles 3, 57 and 62, and that these penalties include deportation of a foreigner from the country on completion of his prison sentence (art. 97 of the Code). The Court of Cassation, which is the highest court in the Kuwaiti judicial hierarchy, has ruled that a foreigner is any non-Kuwaiti person, regardless of whether he possesses a nationality or is stateless. As the person in question is still a foreigner under Kuwaiti law, inasmuch as he has not obtained Kuwaiti citizenship, as explained above, the penalty of deportation to which he has been sentenced is a mandatory penalty pursuant to the Kuwaiti legislation promulgated with the approval of the National Assembly (Parliament) and is not politically motivated.

14. With regard to the allegation that Abdullah Fairouz Abd al-Kareem was arrested and detained without a warrant and that he was beaten during his arrest, a study of case file No. 18/2013 on control of State security (18/2013/State Security Felonies) indicates the following:

The person concerned was arrested by duly authorized police officers on the evening of Monday, 4 November 2013, pursuant to an order issued by the Office of the Public Prosecutor on the same day.

He was held in custody by the competent police authority for no longer than the legally prescribed period, having been brought before the Office of the Public Prosecutor on the evening of 5 November 2013, the day following his arrest.

The accused was held in pretrial detention pursuant to an order issued by the Office of the Public Prosecutor on 6 November 2013 for a 10-day period of pretrial detention with effect from the date of his arrest.

His pretrial detention pending trial was extended on expiry of the 10-day period pursuant to an order issued by the competent court at a hearing on 14 November 2013.

The allegation that the accused was arrested without a proper warrant and detained arbitrarily is therefore unfounded and contrary to the facts, since a study of the case file shows that all the measures taken were based on orders issued in due and proper form by competent bodies acting within the limits of their legal authority and in accordance with articles 9, 10, 11, 39 (1) and (2), 48, 53 (1), 60, 62, 67, 69, 70 and 144 of the Code of Criminal Procedure.

With regard to the convicted person's statements during the investigation to the effect that he was blindfolded, beaten and insulted during his detention in police premises, this was denied by the police officer and no visible traces substantiating that allegation were found when he was brought before the competent Office of the Public Prosecutor for questioning. **Moreover, the convicted person stated that the identity of the person who performed those acts was unknown and he did not accuse any specific person. He added that the acts to which he had been subjected were not of a coercive nature, that his statements during the investigation had been made of his own free will and that the incident had not left any medically detectable injuries or traces.**

Consequently, the allegation is mere hearsay. It is unsubstantiated by presumptive or other evidence and could not be verified during the investigation.

15. It should be noted that article 3 of the Criminal Code stipulates that: "Felonies are offences punishable with the death penalty or with imprisonment for life or for a fixed term of at least 3 years."

Article 57 of the Criminal Code stipulates that: "The principal penalties that can be imposed in accordance with this Code are: ... (c) A fixed term of imprisonment."

Article 62 of the Criminal Code stipulates that: "A fixed term of imprisonment shall not amount to less than 24 hours or to more than 15 years."

Article 66, paragraph 7, of the Criminal Code stipulates that: "The consequential and supplementary penalties prescribed in this Code are: ... (7) Deportation of a foreigner from the country."

Article 67 of the Criminal Code stipulates that: "A penalty is consequential if it is prescribed by law as an inevitable consequence of the imposition of the principal penalty ..."

Article 79, paragraph 2, of the Code stipulates that: "If a foreigner is sentenced to a criminal or custodial penalty for a defamatory offence or a fraudulent breach of trust, the judge shall order his deportation from the country on completion of his sentence."

The rulings of the Court of Cassation are based on the firmly established principle that: "A foreigner is any non-Kuwaiti, regardless of whether he possesses another nationality or is stateless" (judgment of the Court of Cassation handed down at the sitting of 24 October 1994 concerning criminal appeal No. 85/1994).

Article 25 of Act No. 31 of 1970 amending various provisions of the Criminal Code stipulates that: "Anyone who, openly, in a public location or in a location where he can be heard or seen by a person in a public place, contests the rights and authority of the Amir, defames his person or disparages the basis on which he holds office, by word of mouth or clamorous speech, in writing or through graphic or pictorial representation or any other means of expression, shall be liable to a penalty of up to 5 years' imprisonment."

In light of the foregoing, and given that the judgment handed down in case No. 18/2013 on control of State security (18/2013/State Security Felonies) sentenced the convicted person, Abdullah Fairouz Abdullah Abd al-Kareem, to the penalty of 5 years' imprisonment prescribed for the offence defined in article 25 of Act No. 31 of 1970 amending various provisions of the Criminal Code, the order for his deportation from the country as a consequential penalty was inevitable, inasmuch as the penalty to which he was sentenced constituted a criminal penalty of more than 3 years' imprisonment and in view of the fact that he was still a foreigner due to his non-acquisition of Kuwaiti citizenship, as explained above. Accordingly, the penalty of deportation was a legally mandatory penalty prescribed in the above-mentioned articles and was not politically motivated.

It should be noted that the Court of Appeal may order that the two prison sentences be served concurrently if so requested by the convicted person. Furthermore, the Amir is empowered to waive penalties, including the penalty of deportation from the country, in accordance with the provisions of articles 221 and 239 of the Code of Criminal Procedure.

It may be inferred from the facts reviewed above that the allegation by Mr. Abdullah Fairouz that he was subjected to a beating is unfounded. He is serving a prison sentence pursuant to a court judgment handed down against him after legal proceedings in which he enjoyed all the safeguards provided for in the Constitution, Kuwaiti law and international treaties, including the right to a fair trial at all levels of jurisdiction in keeping with the principle that the accused is innocent until proven guilty, the right to appoint defence counsel, the right to be tried in public, and all the other rights guaranteed to an accused person under Kuwaiti law. It should be noted that Mr. Fairouz's defence counsel is Dr. [REDACTED] and that all the details of the trial and the substantiating grounds for the judgment were published in full in the mainstream media and the social media.

17. **In light of the foregoing and of the facts and clarifications provided by the competent authorities, Mr. Fairouz Abd al-Kareem fully enjoyed, and is still enjoying, all the fundamental legal guarantees of the right to a fair and public trial. Moreover, all legal rules have been observed in accordance with national and international norms.** He was not held in solitary confinement and was detained only after the proceedings were instituted against him and the sentence was imposed. Fact Sheet No. 26 published by the Working Group on Arbitrary Detention (GE.99-46207) contains the following comment on the definition of arbitrary detention: "Since detention in itself is not a violation of human rights, international law has progressively endeavoured to define the limits beyond which a detention, whether administrative or judicial, would become arbitrary." The definition is not applicable to the case of Mr. Fairouz, whose trial, as already mentioned, was fair and conducted in public. Furthermore, he was not kept in detention after the completion of his sentence or despite an amnesty law applicable to him (see Fact Sheet No. 26). His detention is in conformity with the provisions of the International Covenant on Civil and Political Rights, in particular article 2, paragraphs 3 (a) and (b), in Part II, and article 9, paragraphs 1, 2, 3 and 4, article 12, paragraph 3, article 13, article 14, article 15, article 18, paragraph 3, and article 19, paragraph 3, in Part III of the Covenant.

18. According to the communication, Mr. Abd al-Kareem "is a human rights defender, writer and journalist". We wish to make the following comments on this point:

The person concerned was not arrested on account of his action, as he claims, as a human rights defender nor for his work as a writer and journalist. He was arrested in connection with acts that constitute offences under Kuwaiti law.

It is not permissible for a person who is arrested for having committed acts that constitute offences under Kuwaiti law to seek remission by claiming to be a “human rights defender” or a “journalist”!! In any case, Mr. Abd al-Kareem’s allegation has not been proven.

19. We wish to reaffirm that the State of Kuwait respects human rights defenders at both the national and international level. On this point, it should be recalled that in 2015 the NGO Human Rights Watch failed to secure the consent of any State in the region apart from Kuwait for the presentation of its report on the human rights situation in the countries of the region, including Kuwait. It presented the report freely and transparently, with full local and foreign media coverage. We also wish to draw attention to the visit by an Amnesty International delegation to Kuwait in December 2015 to present its report on the State of Kuwait. The visit was welcomed and facilitated by the competent authorities. In addition, Amnesty International held a press conference in the State of Kuwait that was attended by representatives of the local and international media. It reviewed the human rights situation in Kuwait with the full encouragement of the relevant authorities.

20. Many civil society organizations deal with human rights issues in the State of Kuwait and there are also many human rights activists. Kuwait is renowned for its lively political scene and its open and democratic society. There are more than 20 independent newspapers and television channels that host lively debates each day on Kuwaiti politics.

21. We also wish to underscore that there is no charge in the State of Kuwait based on the designation “human rights defender”. Nobody has ever been arrested or tried on that ground, and the law makes no distinction between citizens on the ground of their affiliation, or their personal or public interests. Article 29 of the Constitution stipulates that the people are equal in terms of human dignity and in terms of legal rights and duties and that there is no discrimination on those grounds. It goes without saying that legal proceedings are instituted only for criminal offences and that any allegation of ill-treatment is investigated forthwith by the competent authorities. It should be borne in mind in this context that it is not permissible for an individual who commits an offence and is fully aware of doing so, such as undermining the dignity of public officials in the performance of their duties or forging official documents with a view to obtaining citizenship, to invoke as a pretext that he is a human rights defender and that the injured party has no right to take legal action against him in the interests of redress or with a view to verifying the evidence, thereby endeavouring to evade accountability and prosecution for breaking the law. It should further be noted that the international Declaration on Human Rights Defenders states clearly that the protection of rights and freedoms is subject to applicable international obligations, which are determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others.

22. We wish to reaffirm that the judiciary is respected in the State of Kuwait as one of the three branches of government. Article 163 of the Constitution states that judges are not subject to any authority and that no interference in the conduct of justice is permissible.

Article 166 of the Constitution states that the right of recourse to the courts is guaranteed to all people. The Code of Criminal Procedure is consistent with international standards of justice, since litigants are guaranteed all legal safeguards, such as a public trial, the presence of legal counsel and other safeguards. It follows that all persons whose rights have been violated can have recourse to the Kuwaiti courts to seek legal protection by

instituting proceedings before the Office of the Public Prosecutor on the ground that his constitutional rights have been violated. He can also institute civil proceedings to demand redress or compensation for any physical or psychological damages suffered.

As already stated, all the legal proceedings instituted against the person concerned were in conformity with the provisions of the International Covenant on Civil and Political Rights, in particular article 2, paragraphs 3 (a) and (b), in Part II, and article 9, paragraphs 1, 2, 3 and 4, article 12, paragraph 3, article 13, article 14, article 15, article 18, paragraph 3, and article 19, paragraph 3, in Part III of the Covenant.

It may be concluded from the foregoing that the person concerned did not exercise his freedom in conformity with the provisions of the International Covenant on Civil and Political Rights or of the Universal Declaration of Human Rights. We have demonstrated this in the present communication by citing relevant provisions of the International Covenant on Civil and Political Rights and of the Universal Declaration of Human Rights.

23. In addition to our references in this communication to article 21 of the Universal Declaration of Human Rights, and to article 12, paragraph 3, and article 19, paragraph 3, of the International Covenant on Civil and Political Rights, we wish to note that article 9, paragraph 1, of the International Covenant on Civil and Political Rights stipulates that: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." In addition, article 14 of the International Covenant on Civil and Political Rights was, as already demonstrated, fully complied with, since recourse was had to the courts; he was provided with a fair and public hearing by a competent and impartial tribunal; he was accorded the right to litigate at all stages of the proceedings; all interested parties were entitled to attend the trial at all levels; the judgments were disseminated in the social media and the judgments were delivered in public. All judicial requirements were met, including provision of counsel, public proceedings, and the right to demand a review at different stages of the proceedings if the judgment was not in his favour. We also wish to point out that article 19, paragraph 3, of the International Covenant on Civil and Political Rights stipulates that: "The exercise of the rights provided for in paragraph 2 of this article carries with it **special duties and responsibilities. It may therefore be subject to certain restrictions**, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights **or reputations** of others; (b) **For the protection of national security or of public order** (ordre public), or of **public health or morals**."

24. The person concerned was arrested and detained in accordance with the legal procedures set forth in article 9, paragraph 1, of the International Covenant on Civil and Political Rights, which stipulates that: "No one shall be deprived of his liberty **except on such grounds and in accordance with such procedure as are established by law**." In addition, all the legal procedures were conducted in accordance with article 9, paragraph 2, of the International Covenant on Civil and Political Rights. As already noted, the person concerned was informed of the reasons for his arrest and of the charges against him. Furthermore, the procedures were consistent with article 9, paragraph 3, of the Covenant, inasmuch as he was brought before a judge in accordance with the applicable legal procedures. The allegation that the accused was arrested without a proper warrant and detained arbitrarily is therefore unfounded and contrary to the facts, since a study of the case file shows that all the measures taken were based on orders issued in due and proper form by competent bodies acting within the limits of their legal authority and in accordance with articles 9, 10, 11, 39, 48, 53, 60, 62, 67, 69, 70 and 144 of the Code of Criminal Procedure.

25. **It may be concluded from the foregoing review of relevant national legislation and international law that all the measures taken against the person concerned were**

consistent with the norms and standards laid down in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

26. It should be noted that the Working Group on Arbitrary Detention sent us the same information as that contained in your communication (which seems to have come from the same source). The competent authorities in the State of Kuwait sent a response, clarifying all the points and replying to all the questions raised. The Working Group on Arbitrary Detention forwarded the response to the source (who provided the same information as that contained in your communication: reference No. AL KWT 7/2015 dated 17 December 2015). **The Working Group on Arbitrary Detention admitted in a communication dated 12 October 2015 that the source was unable to comment on our replies.**

27. **We wish to underscore the importance of including the content of this response, with all its explanatory points and components, and of appending it to your report to the Human Rights Council.**
