

*(Translated from Arabic)*

## **Permanent Mission of the State of Kuwait to the United Nations Office at Geneva**

### **I. As a matter of principle:**

1. Although your communication is dated 1 February 2021, it appears that the Special Rapporteur on the independence of judges and lawyers had formed a preconceived belief regarding the credibility of the complainant. Hence, there was no point in making any clarifications or providing a statement, since, prior to the dispatch of your communication of 1 February 2021 and the request for clarifications, the Special Rapporteur on the independence of judges and lawyers made a statement, on 11 January 2021, on the Twitter social media platform against the State of Kuwait and in support of the complainant's point of view. This constitutes a breach of the principle of impartiality, which is enshrined in the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council. His conduct breached the provisions of articles (8) and (13) (a) and the procedures specified in the Code of Conduct regarding the receipt of complaints and their treatment in accordance with due process. As a result, and on these grounds, the Permanent Mission sent communication No. M 19/2021 on 2 February 2021, enclosing a copy of the letter of contestation, which should be taken as an integral component of this explanatory communication.

2. With regard to the opinion adopted by the Working Group on Arbitrary Detention in document WGAD/2020/KWT/OPN, dated 9 November 2020, we wish to state that the Permanent Mission sent communication No. M 25/2021 on 9 February 2021 containing a comprehensive response to all the arguments cited by the Working Group on Arbitrary Detention as a basis for its opinion regarding the Russian national, Ms. Lazareva. The response included corrections on many conceptual matters as well as clarifications regarding missing content. We also draw your attention to a copy of the Permanent Mission's communication referred to above, which constitutes an integral component of this explanatory communication.

3. It should be noted that all our previous responses and communications have been comprehensive and have refuted, fully and in detail, all the allegations raised by the defendant in her complaint. If the intentions were sincere, this should have brought the entire complaint to a close. However, that hope has been dashed. The conclusions and opinion issued by the Working Group on Arbitrary Detention and the views expressed by the Special Rapporteur on the independence of judges and lawyers have been so premature and disappointing that one suspects both the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers to have had preconceived beliefs regarding the credibility of the complainant. Accordingly, there was nothing to be gained from providing clarifications or statements. Nonetheless, the competent authorities in Kuwait confirm that they are fully prepared to cooperate and to provide all requested information and comments.

4. We are fully aware of the pressure brought to bear by the Omnia law firm, based on its commercial relations with the complainant, but this matter should not undermine the principle of impartiality in processing the available information.

### **II. The legal provisions that must be complied with:**

1. We wish to draw attention to article 6 (a) of the Code of Conduct for Special Procedures Mandate Holders (A/HRC/RES/5/2), according to which mandate holders should always seek to establish the facts based on objective, reliable information from relevant credible sources. The claims made by the source, which are referred to in your communication and upon which the Working Group's opinion was based, are not supported by solid facts and evidence provided by the source or documented information from reliable sources, as they came from a law firm, Omnia Strategy LLP, which had previously tried to negotiate with Kuwait and sent letters to the Government of Kuwait in this regard (a copy of which is attached).

2. We should also like to draw attention to article 9 (a) of the Code of Conduct, which stipulates that the communication should not be politically motivated, noting that Ms.



Lazareva, and certainly the source that provided the Working Group with inaccurate information, engages in wide-ranging commercial activities and provides such misinformation for commercial reasons in order to defame the State of Kuwait and its judicial system.

3. In addition, article 9 (d) of the Code of Conduct stipulates that the communication should be submitted by a person or a group of persons acting in good faith in accordance with principles of human rights. These allegations and the information submitted to the Working Group were previously reported by media outlets and commercial law firms that are hostile to Kuwait and have a commercial agenda that has nothing to do with human rights.

4. Accordingly, we would like to make it clear that the allegations reported by the source to both the Working Group and the Special Rapporteur on the independence of judges and lawyers are false and fabricated and that the information provided by the Government of Kuwait was not taken into account, contrary to Human Rights Council resolution 7/24 of 26 September 2013, according to which the information provided by States should be given due consideration. The information provided by the source was taken as established fact, without evidence being provided and without account being taken of the rules set out in the Code of Conduct, which underline the centrality of the principles of impartiality and objectivity, particularly preambular paragraph (g) of the Code, which emphasizes fairness and impartiality.

5. The allegations raised by the source, on the basis of which the Working Group reached its conclusions, are attempts to distort the facts and exert pressure with a view to influencing the decision taken by the courts regarding this woman, who misappropriated public funds and the assets of pensioners and then fled from Kuwait.

6. We wish to reaffirm that the proceedings against this person were legally sound and were brought based on orders from and subject to oversight by the judiciary, which is neutral and impartial and guarantees the rights of the accused to a fair trial based on the standards and principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. We also wish to reaffirm that all the legal proceedings and trials to which this woman has been subject are consistent with the International Covenant on Civil and Political Rights, particularly part II thereof: article 2 (3) (a) and (b) and article 9 (1) to (4), as well as article 12 (3), articles 3, 14 and 15 and article 18.

7. We would also like to draw attention to paragraph III (a) of the Fact Sheet concerning the Working Group on Arbitrary Detention, which states that cases should be investigated, provided that no final decision has been taken in such cases by domestic courts, in conformity with domestic law. We also wish to point out that the Fact Sheet is based on Commission on Human Rights resolution 1997/50, which considers that deprivation of liberty is not arbitrary if it results from a final decision taken by a domestic judicial body.

8. It is important to take into account document A/HRC/WGEID/102/2 of 2 May 2014. The whereabouts of this individual and the measures taken against her are clear. It should be noted that she has fled from Kuwait.

9. We wish to underscore that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, have been applied with respect to this individual, in particular principles 2, 4, 9, 11, 12, 17, 18, 19, 32 and 37.

10. We also wish to underscore that the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council by resolution 663 C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1977, have been fully applied with respect to Ms. Lazareva.

### **III. Clarifications and assurances:**

1. We reaffirm that the case concerning Ms. Lazareva has nothing to do with human rights issues, since she enjoyed all legal guarantees, including access to a lawyer, submission of pleadings, hearing of witnesses and a public trial. Account was taken of all her procedural and substantive rights, in accordance with the obligations enshrined in the Constitution, Kuwaiti law and the international treaties that Kuwait has ratified and which, according to its

regulations, have primacy over domestic law. As already stated, Ms. Lazareva enjoyed all the legal guarantees enshrined in the Constitution, Kuwaiti law and international treaties, including the right to a fair trial at all levels of judicial process, the right to appoint a lawyer to defend her, the right to a public hearing, and other guarantees enshrined in Kuwaiti law and relevant international treaties.

2. We reaffirm that the aim of the allegations made by the source was to exert pressure in order to influence the course of the trial and the sound legal norms and procedures followed in the case against Ms. Lazareva. Clearly, charges such as money laundering and confiscation of the assets of persons with small pensions cannot be concealed by making false allegations related to human rights.

3. The State of Kuwait is dedicated to the promotion of human rights issues and therefore continuously cooperates with all special procedures. Furthermore, it reaffirms the transparency shown by the State in providing clarifications and responses, and the willingness of the competent authorities, based on their concern for human rights issues, to respond to any further inquiries and observations.

4. We are well aware of how much pressure and influence Ms. Cherie Blair's Omnia Strategy law firm is bringing to bear on the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers for commercial reasons related to the firm's interests with Ms. Lazareva, but we trust in the impartiality of the special procedures in dealing with this matter.

5. The source (Omnia) claimed that the Government had violated article 9 of the International Covenant on Civil and Political Rights, but the Working Group concluded that the evidence provided by Omnia was insufficient. This shows that the rest of the allegations and claims also lack credibility, for what is built on falsehood must be false.

6. In addition, the Working Group acknowledged that Omnia's allegations concerning the Government's violation of article (14) (3) (b) of the Covenant were untrue, which demonstrates the extent to which the remainder of the allegations are also false.

7. With regard to the issue of witnesses, the Working Group concluded that there had been no violation of the rights of the defence, which is crucial and confirms the fairness of the Kuwaiti justice system. Moreover, it contradicts the source's false claims that the rights of the defence were violated!

8. Despite all of these false allegations, the Government of Kuwait has given due attention to the information and observations it has received. They were scrutinized and investigated and the measures taken were examined to ensure that they were consistent with international standards, including those stipulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The procedures undertaken were confirmed to be correct and in conformity with international standards.

9. As the individual in question fled from Kuwait and embezzled retirement funds, it is essential in the interests of justice and fairness to ensure that she faces justice. She is accused of money laundering and embezzlement of funds of retirees with small pensions. The misappropriation of public money cannot be encouraged by invoking human rights!

10. Unfortunately, the source that provided the Special Rapporteur and the Working Group with information (the Omnia law firm) is trying to exploit the opinion taken by the Working Group in the negotiating process with the Government of Kuwait. See the attached letter from Omnia to the Government of Kuwait in this regard.

11. The allegations made by the source to the Working Group and the Special Rapporteur on the independence of judges and lawyers seek to imply that the issue has political aims, that there is a victim, and that core human rights issues have been violated. But the facts indicate that the issue is purely legal, that it concerns embezzlement, money laundering and criminal matters related to preservation of the rights of others, matters that obviously also fall within the fields of competence of the Special Rapporteur on the independence of judges and lawyers and the Working Group.

12. The allegations constituted an affront to the Kuwaiti judiciary, especially the alleged absence of fair trial guarantees and lack of integrity of the plaintiffs. These claims are entirely

inadmissible and at odds with the commitment of the State of Kuwait to the justice and impartiality of its judiciary.

13. Given the prime international importance of the issues of money laundering and embezzlement as well as preservation of the rights of others, the civilized countries of the world have sought to root out corruption, which is viewed as a scourge in terms of the threat it poses to the security of individuals and groups, dashing their hopes and impeding their development. Corruption tends to devour wealth and distort the relations between States and peoples, undermining the stability of any system in which it thrives. The perpetrators zealously endeavour to form gangs and groups that live off the crumbs of corruption, gradually extending and enhancing their capabilities, exploiting the globalization of technology, and generating transnational organized crime, especially money laundering, in order to conceal the proceeds of corruption. As corruption has become a serious concern for the international community, the competent authorities and their allies have stressed the need to eradicate corruption and to take vigorous action to combat it in various fields. As awareness of the dangers of corruption crimes grows, it is essential to confront the phenomenon on the basis of the United Nations Convention against Corruption (Merida, 2003) and the United Nations Convention against Transnational Organized Crime (Palermo, 2000) and the Protocols thereto.

14. The Public Prosecutor's Office of the State of Kuwait confirms that, notwithstanding the gravity of the offences with which she was charged, Ms. Maria Lazareva exercised her right to a defence fully and without any curtailment or impediment. She enjoyed all constitutional guarantees of access to a fair trial, in accordance with the provisions of the International Covenant on Civil and Political Rights, which are similar, in terms of wording and content, to article 34 of the Kuwaiti Constitution, which stipulates that: "An accused person shall be presumed innocent until proved guilty in a legal trial, in which the necessary guarantees for the exercise of the right to a defence are secured."

15. The Kuwaiti Constitution guarantees the independence and rights of the judiciary, supports its staff and bolsters its structures. Moreover, the soundest guarantees for judges are those derived from their own judgments. Their conscience serves as a fortress for inviolability and constitutes the basis and mainstay of the independence of the judiciary, which is not determined solely by texts or laws. Rather, the laws establish guarantees that confirm and reinforce the rights of the judiciary. The courts and the Public Prosecutor's Office perform their judicial functions based on objective evidence derived from their abstract assessment of the circumstances and facts of the case, and are not influenced by any other considerations. They are not swayed by any factor other than the sovereignty of truth, justice, conscience and compliance with the provisions of the law and the treaties that the State of Kuwait has ratified and which have primacy over domestic law.

16. The defendant was represented before the Public Prosecutor's Office during her interrogation by the interpreter Ruslan Shogozhev (a Russian national) in order to translate on her behalf from Arabic into Russian and vice versa. The defendant and her lawyers submitted defence requests and pleas, as evidenced by the investigation records provided to the defendant.

17. In light of the evidence concerning the defendant Maria Lazareva, the Public Prosecutor's Office endorsed the aforementioned charges and referred the two cases for trial to the competent court (the criminal court), which is an ordinary court of general jurisdiction. Article 7 of the Kuwaiti Code of Criminal Procedure and Trials stipulates that: "The criminal court shall be composed of three judges of courts of first instance and shall hear all criminal cases referred to it."

18. The Special Rapporteur on the independence of judges and lawyers has already been provided with a comprehensive communication containing all relevant information concerning the case of the Russian citizen Ms. Lazareva, including evidence, lists of visits by her lawyers, and other information. Accordingly, we kindly request you to acknowledge that the aforementioned communication, as well as communication M 190/2019 dated 18 October 2019, constitute an integral part of this communication, as they contain detailed information concerning the case.

#### IV. The facts:

1. In the light of the clarifications provided in our previous communications and the current communication, we confirm that there have been attempts to distort and to spread slander and lies, devoid any legal basis, concerning alleged acts of intimidation and retaliation against Ms. Lazareva's team. How can these allegations be reconciled with the number of lawyers assisting her, as stated in our communication M 190/2019, dated 18 October? How can they be reconciled with the letter of thanks that we received from Omnia following the visit to the State of Kuwait of the legal team of the Russian citizen Ms. Lazareva? How can the allegations be reconciled with our response, clarifications and cooperation with everyone concerned, including the special procedures? How can they be reconciled with the desire of the Omnia legal team of the Russian citizen Ms. Lazareva to visit Kuwait once again to negotiate with the executive authority? Lastly, how can they be reconciled with our welcoming attitude and our cooperation with the procedure of international arbitration?
2. The lack of evidence and proof, and the inefficacy of the information provided in the past, render the accusation of obstructing the performance of the defence team's tasks an extremely facile charge that requires no evidence. It is also easy for the other party to bring the charge with a view to shuffling the cards and influencing the course of the judiciary.
3. As we already stated, the fact that the Russian citizen Ms. Lazareva is currently a fugitive from the State of Kuwait has had no influence on the international arbitration to which the two parties have had recourse.
4. We assure the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers that the allegations of intimidation or reprisals faced by Ms. Lazareva's legal team are entirely unfounded. The other party must submit documents and evidence to prove such allegations, and we are prepared to confront them and to assume responsibility.
5. A response to the opinion adopted by the Working Group on Arbitrary Detention was submitted by the Permanent Mission in communication M 25/2021, dated 9 February 2021. The communication clarified all aspects of the points on which the Working Group based its opinion, including the information that it deemed to be essential in reaching its opinion.
6. Your communication AL KWT 1/2021, dated 1 February 2021, stated that you did not wish to prejudice the accuracy of the allegations. Unfortunately, however, a judgment was adopted on your behalf in advance, as noted by the Special Rapporteur on the independence of judges and lawyers on 11 January 2021, before the other party's point of view was taken into account. We are unaware of the grounds or the significance of such action.
7. We wish to reassure the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention that the State of Kuwait is fully committed to adopting all appropriate measures to enable all lawyers to perform their duties effectively and independently, without fear of reprisals, interference, intimidation, obstruction or harassment. This is confirmed by the human rights record of the State of Kuwait.
8. The State of Kuwait is also seriously determined to abide by all international human rights instruments and norms pertaining to such allegations. This is borne out by the participation by Kuwait in discussions of its periodic reports on human rights issues and its ratification of a large number of relevant international treaties.
9. With regard to the question as to whether the defence team requested more time to study the case file, we wish to provide the following information:
  - (a) This allegation is also unfounded and has been discredited, invalidated and shown to be contrary to the evidence in the case file throughout the judicial proceedings, both before the Criminal Court (the court of first instance) and the Court of Appeal.
  - (b) The Criminal Court initiated the case with a hearing on 24 December 2017, which was attended by the accused and her defence team composed of three lawyers. The Court granted their request to photocopy the case documents and annexes. At a hearing on 14 January 2018, the case concerning release of the accused was adjourned until a hearing on 4 February 2018. The accused attended the hearing that day with her defence team, and

the Court unsealed the evidence and made it available to all the parties involved. The case was then adjourned until 18 February 2018. The accused attended that hearing with her defence team, who requested the adjournment of the case. The Court granted this request and ordered the adjournment of the hearing until 1 April 2018, when they would present their defence. The accused attended that hearing with her defence team. The Court heard their requests and they submitted a written defence statement. The accused attended a hearing on 22 April 2018 with her defence team, which presented all aspects of her defence after the Court had heard the prosecution witness in the case. The accused attended the final hearing on 29 April 2018 with the same defence team that had presented her defence pleadings on 1 April 2018.

At a hearing on 6 May 2018, the Criminal Court sentenced the accused to 10 years' imprisonment with hard labour, to reimbursement, in conjunction with another defendant, of 11 million Kuwaiti dinars (KD), to payment of a fine, in conjunction with the same defendant, of KD 22 million, and to deportation from the country after serving her sentence.

The defendant filed an appeal against the judgment, and the Court of Appeal reheard the case at consecutive hearings. The Court decided at a hearing on 5 May 2019 to release the defendant upon payment of bail of KD 20 million and to impose a travel ban. At a hearing on 2 June 2019, the Court decided to reduce the bail to KD 1 million, which she paid on 12 June 2019, thus ensuring her release.

With regard to the merits of the case and the defence of the accused, the Court of Appeal, at a hearing on 9 June 2019, granted the request of the defence team of the accused to hear witnesses for the defence and to review and photocopy all of the documents in the case file. At a hearing on 23 June 2019, the Court of Appeal heard the witnesses and granted the request by the defence team to adjourn the case until 15 September 2019. On that date, the Court granted the request of the defence team to adjourn the proceedings in order to allow time to present their case, authorized them to copy case files and to announce the witnesses they had requested. At a hearing on 29 September 2019, the Court granted the request by the defence team of the accused to adjourn the proceedings so that it could present her defence.

At a hearing on 29 December 2019, the Court decided, after the defence team of the accused had presented all aspects of her defence and the Court had granted all its requests, to suspend the proceedings in order to prepare its judgment.

At a hearing on 20 January 2020, the Court of Appeal issued its verdict, which amended the judgment against which the appeal had been filed. It sentenced the accused to seven years' imprisonment, to reimbursement, in conjunction with another defendant, of KD 11 million, to payment of a fine, in conjunction with the same defendant, of KD 22 million, and to deportation from the country after serving her sentence.

On 22 January 2020, the convicted person filed an appeal with the Court of Cassation, which is the final court of appeal in the country and the highest court in the judicial hierarchy. It monitors the enforcement of the law, the validity of court proceedings in the cases before it and annuls any judgments that may have been marred by a violation of the law.

In her appeal to the Court of Cassation, the convicted person requested that the enforcement of her custodial sentence should be suspended and that the case against her should be dismissed.

At a hearing on 9 November 2020, the Court of Cassation ruled that the enforcement of the sentence should be suspended until the ruling on the appeal was handed down.

(c) The review of the proceedings in the trial of the accused (which considered in detail the records of hearings before the courts at all levels of litigation in the presence of the accused and her defence team) clearly refutes the allegations on which the Working Group based its opinion, namely that the defendant's defence team was granted only a short time to study the case and prepare its defence and that it was denied access to the entire case file.

(d) The facts set forth above constitute, on behalf of the Working Group and any fair-minded party, an exemplary application of the principles of a fair trial, in which the accused was provided with all human rights guarantees and granted full respect for her right to a defence, using all the rights and powers established by law, including the right to request

that one's case not be heard by a particular judge. In light of the foregoing, is it possible to argue that there are no legal grounds justifying this person's deprivation of liberty? Or that the trials seriously violated the principles of the Universal Declaration of Human Rights?

10. With regard to the criminal prosecution of the Kuwaiti lawyer for the defence team, we wish to clarify that the measures taken against one of the authorized lawyers were based on a report submitted by a public official. The incident was investigated in a fully independent manner, based on the complaint filed by a citizen who is a public official. The lawyer was referred for criminal prosecution on the charge of insulting a public official during the performance of his duties. The issue addressed in this case is entirely unrelated to the charges on which the case of Ms. Lazareva is based. Furthermore, the accused lawyer did not claim or allege that the measures were taken against him out of spite for his defence of the aforementioned accused.

11. With regard to the allegations that the lawyers were intimidated and that Ms. Lazareva was not granted adequate opportunities to consult with her lawyer, we wish to clarify that article 30 of the Prisons Regulation Act No. 26 of 1962 and article 9 of the internal prison regulations grant lawyers the right to meet detained clients in private after obtaining written permission from the Public Prosecutor's Office or the General Department for Investigations. In light of the foregoing, Ms. Lazareva's lawyer was permitted to visit her during her period of detention. The fact that she received regular visits refutes the allegations of the Omnia law firm, as demonstrated by the number and dates of the visits by her lawyers listed in the following table.

<i>No.</i>	<i>Date of the visit</i>	<i>Visitor</i>
1	17 September 2018	[REDACTED]
2	20 September 2018	[REDACTED]
3	10 October 2018	[REDACTED]
4	21 October 2018	[REDACTED]
5	29 October 2018	[REDACTED]
6	4 November 2018	[REDACTED]
7	7 November 2018	[REDACTED]
8	11 November 2018	[REDACTED]
9	4 December 2018	[REDACTED]
10	12 December 2018	[REDACTED]
11	16 December 2018	[REDACTED]
12	17 January 2019	[REDACTED]
13	30 January 2019	[REDACTED]
14	5 February 2019	[REDACTED]
15	21 February 2019	[REDACTED]
16	28 February 2019	[REDACTED]
17	3 March 2019	[REDACTED]
18	21 March 2019	[REDACTED]
19	25 March 2019	[REDACTED]
20	22 April 2019	[REDACTED]
21	6 May 2019	[REDACTED]

<i>No.</i>	<i>Date of the visit</i>	<i>Visitor</i>
22	14 May 2019	[REDACTED]
23	15 May 2019	[REDACTED]
24	22 May 2019	[REDACTED]
25	28 May 2019	[REDACTED]

12. In addition, the following table contains a list of visits to Ms. Lazareva by 13 people during her period of detention, including officials from the embassies of a number of countries.

<i>No.</i>	<i>Date of the visit</i>	<i>Visitor</i>	<i>Nationality of the visitor</i>
1	16 December 2018	[REDACTED]	Russian Federation
2	16 December 2018	[REDACTED]	Russian Federation
3	16 December 2018	[REDACTED]	Russian Federation
4	11 February 2019	[REDACTED]	Russian Federation
5	21 February 2019	[REDACTED]	Kuwait
6	21 February 2019	[REDACTED]	United States of America
7	21 February 2019	[REDACTED]	United States of America
8	21 February 2019	[REDACTED]	United States of America
9	21 March 2019	[REDACTED]	Russian Federation
10	25 March 2019	[REDACTED]	United Kingdom
11	25 March 2019	[REDACTED]	Switzerland
12	22 April 2019	[REDACTED]	Russian Federation
13	22 April 2019	[REDACTED]	United States of America
14	22 April 2019	[REDACTED]	United States of America
15	22 April 2019	[REDACTED]	United Kingdom
16	22 April 2019	[REDACTED]	United States of America
17	28 May 2019	[REDACTED]	Russian Federation

13. With regard to the question on legislative and other measures adopted by Kuwait to ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference and the measures taken to ensure that persons under arrest or detention are provided with opportunities to communicate with and consult their lawyers, we wish to draw attention to the following points:

(a) We wish to emphasize that great importance is attached to the independence of the legal profession in Kuwait, and that lawyers enjoy all guarantees afforded under the law to perform their duties freely and without being subjected to any form of intimidation. We reiterate that the source's allegations of intimidation of the international legal team are unfounded. Ms. Lazareva's international legal team, which visited the State of Kuwait, enjoyed complete freedom to conduct and interview all persons of interest without encountering any impediments. Ms. Cherie Blair sent a letter of thanks, dated 29 March 2019, to the Permanent Representative stating that she had been happy to visit to the State of Kuwait. With regard to the allegation that the international legal team might be faced with reprisals because of its recourse to international bodies, this is entirely fabricated, as demonstrated by



their repeated visits to the State of Kuwait, and by the cooperation and open-mindedness shown by the State of Kuwait towards any inquiry from international bodies on the subject.

(b) With regard to the measures taken in Kuwait to guarantee the independence of the legal profession, and the guarantees adopted to protect and enhance the independence of judges, we wish to draw your attention to the following:

- The judiciary in Kuwait is respected as one of the three branches of State authority. Article 162 of the Kuwaiti Constitution stipulates that: “The honour of the judiciary and the integrity and impartiality of judges are the bases of governance and a guarantee of rights and liberties.” Article 163 of the Constitution stipulates that judges shall not be subject to any authority in their administration of justice and that no interference whatsoever with their conduct of justice is permissible. The law guarantees the independence of the judiciary, and specifies the guarantees and provisions relating to judges and the conditions governing their immunity from dismissal.
- With a view to enhancing democratic frameworks and mechanisms and preventing any curtailment of rights or freedoms, article 50 of the Constitution enshrines the principle of the separation of the main branches of State authority. It explicitly endorses the principle of the separation of powers, in order to preclude any controversy or confusion relating thereto. The article prohibits all three branches (the legislative, executive and judicial authorities) from relinquishing all or part of their jurisdiction, as specified in the Constitution (according to the explanatory memorandum on the national Constitution). Article 50 stipulates that: “In conformity with the provisions of the Constitution, the system of government shall be established on the basis of separation and cooperation of powers. No authority shall be permitted to waive all or part of its jurisdiction, as specified in the Constitution.”
- In the same context, the Constitution deals with the application of the principle of separation of powers to the country’s Amir, whose relationship with the judiciary differs from that with the other State authorities, namely the executive and legislative branches. Articles 51 and 52 of the Constitution stipulate that executive and legislative powers are vested in the Amir through the Cabinet, the Ministers and the National Assembly (the Parliament), while article 53 stipulates that the courts shall exercise judicial authority in the name of the Amir within the limits of the Constitution.
- Judges are subject to periodic inspection of their work, to ensure that justice is properly managed and cases concluded. This procedure is undertaken by the Judicial Inspection Department, which is composed of experienced and qualified judges. Judges who fail to obtain the required ratings in accordance with the law may be subject to penalties.
- Legislative Decree No. 37 of 1990 contains a set of articles on procedures for the appointment of judges, including the following:

Article 21, as amended by Act No. 69 of 2003, stipulates that: “Judges up to first-instance level and their equivalents at the Public Prosecutor’s Office shall be promoted on the basis of seniority and qualifications, whereas promotion to other positions shall be by selection.

In all cases, promotion shall be solely to the next level, and the candidate shall be required to achieve a proficiency score of not less than above average in two consecutive reports.”

- Article 53 of the Constitution of the State of Kuwait stipulates that the courts shall exercise judicial authority in the name of the Amir within the limits of the Constitution. Chapter V of the Constitution specifies the conditions governing the judiciary as one of the main branches of State authority. Article 173 of the Constitution entrusts the monitoring of the constitutionality of laws and regulations to a special court, whose formation and rules of procedure reflect the nature of the major task assigned to it, rather than relying on the jurisprudence of individual courts, since they may express conflicting views in the interpretation of constitutional texts and take issue with laws and regulations without taking into account different points of

view and considerations. The article stipulates that, under the Constitutional Court Act, the National Assembly and the Government may play a part, together with senior members of the judiciary, in the formation of the constitutional court. These are the procedures for ensuring the correct judicial interpretation of the provisions of the country's legislation, first and foremost the Constitution.

- Article 1 of Act No. 14 of 1973, concerning the establishment of the Constitutional Court, stipulates that: "The Constitutional Court shall have exclusive jurisdiction for the interpretation of the Constitution and the settlement of disputes concerning the constitutionality of laws, legislative decrees, regulations and appeals related to the election or competence of members of the National Assembly. Judgments handed down by the Constitutional Court shall be binding on the public and on all other courts."

Article 2 of Act No. 14 of 1973 stipulates that: "The Constitutional Court shall be composed of five justices, who are selected by the Supreme Judicial Council by secret ballot. It shall also select two substitute members, who must be Kuwaiti nationals and who shall be appointed by decree. If the position of any of the original or substitute members falls vacant, the Judicial Council shall select members to replace them by secret ballot and shall issue a decree concerning their appointment."

Accordingly, the Court is mandated to undertake legal and technical work in accordance with its jurisdiction under the Constitution and the law. Its membership is limited to court judges who have advisory status and whose selection is made based on a secret ballot run by the Supreme Judicial Council. These persons are appointed pursuant to an Amiri decree, in line with the country's public order regime, which requires this procedure for State judicial and leadership appointments.

- Mention should be made in this connection of Act No. 109 of 2014, which grants individuals the right of direct recourse to the Constitutional Court to present constitutional disputes in the form of an "authentic legal action". The Court is empowered to declare any law, legislative decree or regulation that violates a constitutional guarantee null and void. This legislation has a manifest impact when it comes to protecting public rights and freedoms.
- With a view to ensuring the proper course of justice and the completion of judicial proceedings, judges' work is subject to periodic inspections by the Judicial Inspection Department that was established pursuant to article 30 of the Organization of the Judiciary Act. A number of articles of the Act were amended, including the procedures for appointing judges.
- The Organization of the Judiciary Act, as amended, contains articles concerning the procedures for appointing judges. Article 23 stipulates that: "Judges and members of the Public Prosecutor's Office, with the exception of deputy public prosecutors (c), shall not be subject to dismissal, and the contracts of retired judges and members of the Public Prosecutor's Office may not be terminated without their consent. Advisers to the Court of Cassation and the Appeal Court shall not be transferred to the Public Prosecutor's Office save with their consent."
- With regard to the regulations governing judges' security of tenure, article 9 of Legislative Decree No. 14 of 1977 concerning the ranks and salaries of the judiciary and members of the Public Prosecutor's Office stipulates that: "The service of judges, and of members of the Public Prosecutor's Office and the Department of Legal Opinions and Legislation ends when they reach the age of 70. Persons who have reached that age may continue to work until the end of the judicial year but their service may not be extended beyond that date."
- As the Kuwaiti Constitution provides for the establishment of a Supreme Judicial Council, a Decree promulgating the Organization of the Judiciary Act No. 23 of 1990, which contains the regulations governing the Council, was adopted. The Council is the prevailing judicial authority in the State of Kuwait and is entrusted with consolidation of the principle of independence. The Act entrusts the Council with the task of appointing, promoting, transferring and delegating judges and members of the

Public Prosecutor's Office, with expressing its views on issues related thereto and with suggesting whatever action it deems to be appropriate. It should be noted that the Act did not assign any role or attribute any powers to the Council regarding interference in the conduct of cases before the courts or the Public Prosecutor's Office. Although the Council is composed of judges of all ranks, the Attorney General and the Undersecretary of the Ministry of Justice, the latter does not participate in the voting process on the Council's decisions. Moreover, while the Council is authorized to invite the Minister of Justice to attend its meetings or present important issues in that context, the Minister may not participate in votes on the Council's decisions. The basic purpose of refraining from the participation of the Minister of Justice and the Undersecretary of the Ministry of Justice in such procedures is to facilitate the work of the Kuwaiti judiciary and to provide an effective means of linking the judiciary with other State bodies in support of its independence and integrity.

14. Article 162 of the Kuwaiti Constitution stipulate that: "The honour of the judiciary and the integrity and impartiality of judges are the bases of governance and a guarantee of rights and liberties." Article 163 stipulates that: "Judges shall not be subject to any authority in their administration of justice and that no interference whatsoever with their conduct of justice is permissible." The Kuwaiti Constitution guarantees the independence and rights of the judiciary, supports its staff and bolsters its structures. Moreover, the soundest guarantees for judges are those derived from their own judgments. Their conscience serves as a fortress for inviolability and constitutes the basis and mainstay of the independence of the judiciary, which is not determined solely by texts or laws. Rather, the laws establish guarantees that confirm and reinforce the rights of the judiciary. The courts and the investigating authorities perform their judicial functions based on objective evidence derived from their abstract assessment of the circumstances and facts of the case, and are not influenced by any other considerations.

15. The information provided above adequately refutes the source's claims and allegations and negates all the illusions put forward, which have no factual basis, especially since they include accusations based on the proclivities of those who make statements without contemplation or scrutiny. This is an extremely important point, since the crucial factor is the source's sincerity, the underlining intentions and motives, and the extent of its understanding of the subject matter and awareness of the rules. The conclusion to be drawn is clearly evident from the scale of the source's inaccuracies and the false allegations on which it based its inquiries.

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