



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

Second periodic report due in 2010; the present report is submitted in response to the list of issues (CAT/C/KWT/Q/2) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)

Kuwait*, **

[16 March 2010]

* The initial report submitted by the Government of Kuwait is contained in document CAT/C/37/Add.1; it was considered by the Committee against Torture at its 334th and 335th meetings, on 13 May 1998 (CAT/C/SR.334 and 335). For the concluding observations, see A/53/44, paras. 220–231.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited prior to transmission to the United Nations translation services.

Replies of the Government of Kuwait to the list of issues (CAT/C/KWT/Q/2) to be taken up in connection with the second periodic report of Kuwait

Item 1

Provide information on guarantees for the extradition of offenders and abstention from repatriation in circumstances in which extradition would constitute a violation of the Convention against Torture.

1. The process for extraditing offenders is regulated under the United Nations, regional and bilateral conventions to which the State of Kuwait is party.
2. Hence, as a general rule, extradition is carried out solely in accordance with specific procedures and regulations, which may not be breached, and only if authorized under an international, regional or bilateral legal instrument or provision of law.
3. As for the deportation or repatriation of foreign nationals, there must be a provision of penal law which authorizes the imposition of such measures as a supplementary sanction. The measure must be applied and imposed under a system affording fair judicial guarantees and must be based on legal grounds, in accordance with article 66 of the Kuwaiti Criminal Code No. 16 of 1960, which defines deportation of foreign nationals as an additional or supplementary penalty.
4. Article 79 of the above Code regulates deportation procedures. It states that a court may issue an order for a foreign national sentenced to imprisonment to be expelled from Kuwait upon completion of the sentence. This is without prejudice to the right of the administrative authorities to lawfully deport foreign nationals. The same article states that, in a case where a foreign national is sentenced to a criminal penalty or deprivation of liberty for an offence involving moral turpitude or dishonesty, the court may order his or her expulsion from Kuwait upon completion of the sentence. Once the sentence has been served, the Office of the Public Prosecutor will transmit the court order to the competent administrative authority for execution.

Item 2

Provide information on notification procedures to foreigners about deportation orders issued against them; on whether a foreigner may express his or her point of view before a deportation decision is taken and whether he or she may take legal proceedings before the Kuwaiti courts to challenge such a decision.

5. Regarding the notification of foreign nationals of deportation orders issued against them, persons convicted of an offence have an inherent right to be informed of the main and supplementary criminal penalties imposed on them. This is spelled out in article 179 of the Code of Criminal Procedure (17/60), which states that a certified copy of a judgement must be provided, free of charge, to the defendant and the prosecution. The copy must be handed to the parties in person and communicated officially to such persons as are identified by the court.

Upon payment of the requisite fees, a person may request an official copy of the judgement or the record of proceedings. The president of the court which issued the sentence takes decisions on such requests and may exempt an applicant from payment of fees, if this is deemed to be justified.

6. Deportation is essentially an additional or supplementary sanction and must be included in the criminal judgement imposing the main sentence. Deportation as a criminal sanction is just one form of deportation and is imposed primarily when the culprit has committed an act of moral turpitude or dishonesty. The penalty is enforced upon completion of the main sentence.
7. The Kuwaiti Constitution and Kuwaiti legislation guarantee everyone in Kuwait a full range of rights at law, including the right to challenge criminal judgements and related penalties, such as deportation. Article 166 of the Constitution guarantees liberties associated with litigation; it states that the right of legal recourse is guaranteed to all, and that the procedures and conditions for exercising this right are laid down in law.
8. In this context, the Kuwaiti Code of Criminal Procedure (17/1960) details a number of processes and procedures for challenging criminal judgements, including sentences issued in absentia. Article 187 of the Code of Criminal Procedure (17/60) states that persons convicted in absentia of lesser and serious offences may appeal against their conviction before the court that handed down the judgement.
9. The Code also offers persons who have been convicted the right to appeal against a first-instance judgement issued in the presence or absence of the parties. Article 199 states that every first-instance judgement of acquittal or conviction that is issued by a petty offences court or criminal court is open to appeal, whether the judgement was issued in the presence of the parties, or in absentia and the deadline for filing a challenge has expired, or in a challenge to a judgement rendered in absentia.
10. In all cases, criminal judgements are only enforceable once they have become final (art. 214 (17/1960)), unless a court considers enforcement of a first-instance judgement to be necessary and feasible.
11. The fact that deportation measures can be imposed as a criminal sanction does not deprive the administrative authority of its right to deport foreign nationals whenever required under the law (Act 16/70, art. 79) and according to a procedure known as administrative deportation. Article 20 of the Alien Residence Act (Decree 17/59) provides that foreign nationals must leave Kuwait on orders from the Chief of Police and Public Security, if they do not hold a residence permit or their permit has expired. They may return, if they meet the necessary conditions for entry stipulated in the Act.
12. Pursuant to article 24 bis of the Alien Residence Act (Decree 17/59), an amicable agreement may be reached with a foreign national who has infringed residence laws and regulations and paid the relevant fine. Such an agreement can be considered a mechanism that is advantageous for foreign nationals subject to administrative deportation.
13. Under article 1 of Act No. 20 of 1981, concerning the establishment of a division of the High Court to hear administrative disputes, requests from individuals for the annulment of definitive administrative decisions on residence and deportation of non-Kuwaitis are excluded from the jurisdiction of the division. Hence, persons subject to deportation may not appeal to the division against a deportation order, although article 169 of the Constitution does establish general guidelines for the consideration and adjudication of administrative disputes and appeals. The article states that the law regulates the adjudication of administrative disputes by a special division or tribunal, establishing the rules of procedure and means by which such a division or tribunal is to deliver administrative justice and granting it the power to overturn vitiated administrative decisions and award damages in respect thereof.

Items 3 and 4

Provide information on measures taken by Kuwait to ascertain that the State to which persons will be deported will not put them in danger of torture; and provide information on cases in which Kuwait shall seek diplomatic assurances from the receiving State.

14. Kuwait has adopted the principle of non-refoulement, meaning that it will not deport or return persons to their home country, if it can be shown that they are likely to be in danger there. Article 46 of the Constitution of Kuwait prohibits the extradition of political refugees.

15. Furthermore, the international conventions on the extradition of offenders, bilateral agreements on judicial and legal cooperation between Kuwait and other countries and multilateral regional conventions which have been integrated into domestic legislation prohibit the extradition of persons involved in political crimes under the conditions set out therein.

16. In 1996, Kuwait signed a cooperation and headquarters agreement with the Office of the United Nations High Commissioner for Refugees (UNHCR), defining the functions of the UNHCR bureau in Kuwait. The bureau plays an important role in protecting and monitoring persons who come under the UNHCR mandate, and cooperates and consults with the Kuwaiti Government on providing international protection for such persons in accordance with the UNHCR Statute and other resolutions adopted by the United Nations General Assembly in relation to UNHCR. The bureau also looks for lasting solutions to the problems of refugees, facilitating their voluntary return to their countries or integrating them into new communities. In cooperation with the Government, UNHCR also plans and provides humanitarian assistance. Every year, the Ministry of Foreign Affairs allocates \$1 million from its budget to support UNHCR.

17. The Kuwaiti Government facilitates access by UNHCR personnel to persons of concern to the organization, as identified in its Statute. At the international level, Kuwait supports international and humanitarian efforts aimed at ending the suffering of refugees in various regions of the world. It consistently provides material and moral support for activities undertaken by UNHCR, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the International Committee of the Red Cross (ICRC). This is only one aspect of the humanitarian services and facilities which Kuwait has always extended to refugees. Kuwait has persistently fought against inhuman practices and spared no effort to fulfil its international obligations.

Item 5

Provide information on asylum applications.

18. Kuwait is not a party to the United Nations Convention relating to the Status of Refugees of 1951, and the Convention is not part of its domestic law. Consequently, in accordance with the principles regulating the applicability of international treaties, the State does not grant refugee status to anyone. However, Kuwait does provide assistance to UNHCR under the Cooperation and Office Agreement signed in 1996. It temporarily hosts persons who come under the UNHCR mandate, pending their resettlement in another country. In this way, it complies with the principle of non-refoulement, cooperates with UNHCR and supports humanitarian efforts.

Item 6

Provide information on whether Kuwait considers taking new legislative measures for the definition of the crime of torture in the Kuwaiti law.

19. To date, no new legislative plans have been devised to establish a specific definition of the crime of torture under Kuwaiti law. However, one of the legislative priorities of the Ministry of Justice is to add a new section to Act No. 31 of 1970, amending certain provisions of the Criminal Code No. 16 of 1960. The proposed section will deal with the subject of crimes against humanity.

20. The Kuwaiti Criminal Code contains a large number of provisions criminalizing various forms of torture. The part of the present report on the fight against torture in Kuwait offers details on these provisions, which are considered to constitute adequate legislative measures.

21. Furthermore, since article 1 of the Convention against Torture provides an extensive, comprehensive and detailed definition of acts of torture, there is no need to adopt legislative measures with the aim of defining torture.

22. Ever since its ratification, the Convention against Torture has formed part of domestic legislation and has had binding force in accordance with article 70 of the Kuwaiti Constitution. This article states that the Amir concludes treaties by decree and transmits them immediately to the National Assembly. It also states that a treaty acquires the force of law upon adoption, ratification, and publication in the Official Gazette. Therefore, and as will be demonstrated throughout this report, it is highly unlikely that the legislation will be found to be deficient.

23. In accordance with part III of Act No. 31 of 1970, amending certain provisions of the Criminal Code No. 16 of 1960, and with the rules and norms set forth in international conventions and declarations, Kuwait endeavours to protect the entire population against torture and other cruel, inhuman or degrading treatment or punishment. Article 53 prescribes criminal sanctions for any public officer or employee who tortures or has a third party torture an accused person, a witness or an expert with a view to extracting a confession to a crime or statements or information thereon. If the torture leads to or is accompanied by an act which carries a more severe penalty under the law, the alleged perpetrator will be subject to that penalty. If the torture leads to death, the perpetrator will face the penalty for intentional homicide.

24. According to article 54, criminal sanctions will be imposed on a public officer or person performing a public service who has a third party inflict or personally inflicts a more severe or a different penalty than that imposed on a convicted person by law. Article 55 prescribes a penalty for a lesser offence for any public officer or employee or a person performing a public service who abuses his or her authority by entering a home without the householder's consent, under conditions where this is not permitted by law, or without observing the relevant rules and procedures.

25. According to article 56, a penalty for a lesser offence will be imposed on a public officer or employee or person performing a public service who abuses his or her position by subjecting people to cruel treatment that is degrading to them or causes them physical pain. Under article 57, a penalty for committing a lesser offence will be imposed on a public officer or employee or person performing a public service who compels others to perform an act not permitted by law or who employs a person in tasks other than those assigned to that person by law. Thus, Kuwait has ensured that its Criminal Code includes provisions of wider application, which criminalize all acts of torture — and any other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture under article 1 of the Convention against Torture — in accordance with the rules on criminal activity. In

keeping with articles 2, 4 and 16, paragraph 1, of the Convention, such acts carry penalties that vary, depending on the gravity of the act. With a view to providing a remedy for victims pursuant to articles 12, 13 and 14 of the Convention, Kuwait ensures that the competent authorities consider complaints promptly and impartially, and that protection is afforded to complainants and witnesses against all forms of ill-treatment or intimidation in connection with a complaint or related evidence.

26. As a general rule, and in conformity with article 15 of the Convention, Kuwait ensures that no statement shown to have been made as a result of torture can be invoked as evidence in any proceedings. Under article (1/159) of the Code of Criminal Procedure No. 17 of 1960, if a court establishes that an accused person made statements or a confession under torture or duress, it must rule them null, void and devoid of any evidentiary value. In this regard, one of the legal rules established by the Kuwaiti Court of Cassation is that a confession is only reliable when made voluntarily; even if sincere, it will not be deemed voluntary if made under conditions of torture, duress or intimidation (Appeal No. 76 of 2003, hearing of 7 December 2003).

27. Kuwait has encountered only a small number of individual acts of torture and has brought those responsible to trial, thereby strengthening the State's role in protecting human rights and fundamental freedoms and enforcing and upholding the law. The Kuwaiti Criminal Code does not specifically define the concept of torture; it leaves this task to the judiciary to perform based on article 34 (2) of the Constitution, which prohibits the infliction of physical or mental injury on an accused person, and article 158 of the Code of Criminal Procedure, which states that no defendant may be coerced, by any means whatsoever, into swearing an oath, giving answers or making specific statements. The Kuwaiti Court of Cassation rulings in Appeal No. 76 of 2003 and Appeal No. 267 of 11 March 2003 make it clear that a confession is deemed reliable when made voluntarily; even if sincere, it will not be deemed to be voluntary if made under conditions of duress or intimidation of any kind. The same rulings state that promises and compulsion are to be considered as interchangeable with duress and threats, since they impair the freedom of accused persons to choose between a denial and a confession and may lead them to believe that making a confession will be to their advantage in some way. Therefore, the legislation authorizes the judiciary to interpret the concept of torture in accordance with constitutional principles, related laws and the case law on definitions of torture.

Item 7

Provide information on the enforcement of the judicial jurisdiction of Kuwait beyond Kuwaiti territory in case a Kuwaiti citizen was tortured overseas.

28. As a general principle, criminal jurisdiction is established depending on the geographical location in which the act of torture was committed, and torture is classified as a punishable offence. Moreover, except where a crime is committed wholly or in part in Kuwaiti territory, Kuwaiti criminal jurisdiction does not extend beyond Kuwaiti territory. This is stated in article 11 of the Kuwaiti Criminal Code (16/60), which provides that the Kuwaiti Criminal Code applies to every person who commits an offence under the Code in Kuwaiti territory or outlying territories. It also states that the Code applies to every person who commits outside Kuwait an act which renders him or her the author of or an accomplice to a crime perpetrated wholly or in part in Kuwait.

29. In the same sense, article 13 of the Code reaffirms that in no case may criminal proceedings be brought against a person who has committed a crime abroad, if evidence is provided that the person has already been sentenced by a foreign court and served his or her sentence.

30. A number of unwritten international rules and norms affirm the right of States to protection of their citizens abroad in accordance with the so-called “diplomatic protection” principle. The requirements of diplomatic protection may have prompted the international community to turn its attention to codifying and developing the unwritten rules of international law, including the principles of diplomatic protection.

31. Diplomatic protection, as viewed in the international context, is regulated by international law, primarily in the conditions set out in treaties and norms. The main conditions in this regard include the following:

(a) Citizenship: on the date when the unlawful act occurs, the foreign national who is a victim of the act must be a citizen of the State to which he or she applies for diplomatic protection;

(b) Exhaustion of available channels of appeal and remedies: victims must have exhausted all channels of appeal or remedies provided for under domestic legislation, as the damage could be remedied or repaired before diplomatic protection is requested;

(c) Internationally unlawful acts: the act which has done harm to the foreign national must be prohibited under international law. For example, it could be a breach of an international norm or a treaty or an offence, act of violence or injury done to the victim.

32. In this regard, the Vienna Convention on Diplomatic Relations, ratified under Act No. 23 of 1969, and the Vienna Convention on Consular Relations, ratified under Act No. 24 of 1975, include provisions on diplomatic and consular protection, which States are entitled to ensure in order to safeguard the interests of their nationals abroad. A major provision is article 3 of the Vienna Convention on Diplomatic Relations, which states that the functions of a special diplomatic mission consist inter alia in protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law. Article 3 of the Vienna Convention on Consular Relations echoes this principle. It states that consular functions include protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law.

Item 8

Provide information on whether, for any reason, Kuwait has rejected a request for the extradition of an individual on the ground that he or she was suspected of having committed a crime of torture, and whether Kuwait has consequently brought him or her to trial.

33. The records and databases of the Ministry of Justice contain no evidence of a case involving such a rejection or of proceedings by the domestic courts concerning such a case.

Item 9

Provide information on training programmes attended by law enforcement and government officials in connection with human rights and the rights of prisoners, and on the qualifications of those responsible for conducting such programmes.

34. The authorities in Kuwait, such as the Ministry of Justice, continuously develop training and coaching programmes with a view to enhancing the efficiency and expertise of law enforcement officers, primarily judges, prosecutors and legal scholars. A special role is played by the Kuwait Institute for Judicial and Legal Studies, which, in coordination with the Ministry of Justice, plans and organizes training courses and workshops for those

involved in human rights work. These events are run taking account of international conventions and instruments and the domestic laws in force in Kuwait. Participants in such training sessions include judges, prosecutors and legal scholars from the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Affairs and Labour and the Ministry of Foreign Affairs, in addition to other expert researchers.

35. The Ministry of the Interior continuously issues administrative instructions to all its departments, sections and units with a view to organizing work, informing subordinates of mistakes made in the course of their work and indicating the best means of achieving desired outcomes without resorting to violence. This method may be preferable to imposing disciplinary sanctions, especially on recently graduated police officers.

36. The Ministry of the Interior has established a number of regulations relating to the selection, assessment and transfer of its staff. The regulations are based on a set of criteria designed to ensure that qualified staff are selected for security tasks, since this is the area where mistakes are most likely to occur and where there is greater interaction with the public, so that there is greater potential for abuses of power or acts of torture. The Ministry furthermore conducts assessments of officers and junior staff to gauge their suitability to remain in certain positions, primarily those where there is more interaction with the public and those involving interrogations, investigations and the detention of persons.

Item 10

Provide information on whether programmes have been put in place to train medical staff on identifying cases of torture, providing documented evidence thereof and assisting in the rehabilitation of victims.

37. In the course of their training, forensic doctors working at the Department of Forensic Medicine will have seen many cases of torture-inflicted injuries. The Department refers such cases to the investigation authorities. It examines, documents and photographs injuries before drafting a forensic medical report for submission to the investigating authority. Through the Department of Forensic Medicine, the Ministry of the Interior conducts workshops to analyse these cases of torture. It informs the relevant authorities of the findings with a view to the completion of the investigations. The workshops are held under the supervision of the Director of the Department of Forensic Medicine and with the participation of forensic physicians. The aim is to assess the work done in these cases in the light of newly available information and to conduct technical assessments.

38. In cooperation with the Ministry of Health Committee to Protect Children's Rights, the Child's Rights Society of the Kuwait Medical Association conducted an awareness-raising session for Ministry of Health physicians on physical, sexual and mental torture of children. For three months from October to December 2009, courses were held for three hours every Wednesday.

39. At health centres, committees for the protection of children's rights educate health workers on child torture. The Ministry of Health is also planning to hold a workshop at Al Sabah Medical Complex for medical staff on dealing with such cases.

Item 11

Provide information on whether training programmes address the Convention against Torture.

40. The Ministry of the Interior has instituted administrative procedures to prevent acts of torture and abuses of power. The topic is included in training plans and Ministry staff are

involved in training held by educational institutes at home and abroad. The relevant section at the Ministry has organized training courses on human rights to provide staff with as much legal information as possible about acts of torture, how to prevent them and the legal consequences facing any person who commits or participates in torture.

41. The Ministry of Education has incorporated the Constitution and human rights in high school curricula, which include a special unit on torture entitled “The right to human dignity and the prohibition of torture”. The human suffering caused by certain regimes which practise torture and abuse is explained. Attention is drawn to the need to combat torture, whether in the form of physical or mental torture or abduction, to the important role of education in this regard and to the importance of human dignity as a fundamental human right that must be observed out of respect for the individuality and integrity of the human being. In order to highlight such values, the textbook illustrates the role of religions, international law and the Kuwaiti Constitution in preserving human dignity and rejecting all forms of torture, whether during the lifetime of a human being or after death; in that regard, they prohibit the mutilation of corpses and infliction of other types of injury.

Item 12

Provide information on whether Kuwait has enacted legislative measures to reduce detention duration, or considers enacting such measures and prohibiting the extension of the detention period.

42. In relation to the amendment of the Code of Criminal Procedure No. 17 of 1960, efforts are being made to review and develop a series of draft criminal laws on, among other things, streamlining litigation procedures without impinging on judicial guarantees.

43. According to articles 17 and 18 of the Prisons Regulation Act No. 26 of 1962, no person may be imprisoned without legal authorization or a written order issued by a competent authority, and no inmate may be kept in prison beyond the period specified in the relevant imprisonment order.

Item 13

Provide information on whether a person may consult a lawyer in the event of his or her detention, and to which extent he or she is free to contact his or her family.

44. Article 75 of the Code of Criminal Procedure guarantees accused persons the right to hire a lawyer to defend them and attend the examination proceedings. The article states that the accused and the victim may attend all preliminary interviews, accompanied by their lawyers, who may only speak with the permission of the investigator. If the accused is under arrest or in prison, the investigator must have him or her summoned during the examination process.

45. Article 98 of the above Code establishes a further defence guarantee for accused persons: the last paragraph of the article states that the accused may at all times submit evidence in his or her own defence, speak with prosecution witnesses and request that defence witnesses be heard or that a particular investigation procedure be taken. Information on such requests and on the case must be placed on record.

46. In relation to the right to a defence, article 120 of the Code of Criminal Procedure (17/60) grants persons accused of a serious offence the right to engage a defence lawyer. If they fail to do so, the court will undertake the task. In all cases, persons accused of lesser offences and the other parties in the case always have the right to appoint a representative to accompany them.

47. With respect to the rights of prisoners to defend themselves in disciplinary proceedings conducted in prison, article 61 of the Prisons Regulation Act (26/1962) states that prisoners must be informed of the alleged violation before any sanction can be imposed. They have the right to present their own defence or ask for certain witnesses to be heard. Testimony is to be translated, if necessary, and all means of a defence must be assured.

48. Article 30 of the Prisons Regulation Act affirms the right of prisoners and accused persons to have contact with their families. It states that Category-A prisoners may receive visitors and exchange correspondence with whomever they wish, within the limits established in the prison regulations, unless this is expressly forbidden in the detention order. Visits are conducted under the supervision of a prison officer or deputy prison officer.

- Persons detained on remand may meet with their lawyer in private, provided that they obtain written permission from the Office of the Public Prosecutor or the investigator, as the case may be.
- Foreign nationals detained on remand have the right to contact the consulate or section looking after their interests, after obtaining permission from the ministry concerned.
- Officials may only have contact with a person detained on remand, if they have received written authorization from the Office of the Public Prosecutor or an investigator. The name of the official, the time of the visit and the date and content of the authorization document must be recorded by a prison officer in the prison logbook.

49. In that connection, article 41 of the Prisons Regulation Act provides that Category-B prisoners may correspond with their relatives and friends and may receive visitors, subject to the conditions established in the prison regulations.

- Upon consultation with the Director of Prisons, facilities must be provided to allow lawyers and representatives of interests sections to visit foreign nationals in prison

50. Consistent with the above, the Kuwaiti Code of Criminal Procedure guarantees that accused persons are brought promptly before an independent judicial body after being placed in detention. It also guarantees the right of relatives, lawyers and physicians to contact them as soon as they are detained. This provides an important form of protection for all persons without exception.

Item 14

Provide information on whether certain laws against terrorism restrict the rights of a prisoner, in particular his or her right to accelerate his or her trial, contact his or her family, consult a lawyer during the detention period, or choose his or her own medical practitioner.

51. No special domestic criminal legislation limits or restricts the rights of accused persons or prisoners; criminal case law is based on two codes, namely the Criminal Code (16/60) and the Code of Criminal Procedure (17/60).

Item 15

Provide information on the maximum period for which asylum-seekers or foreigners residing illegally may be detained, and on whether detention procedures are reviewed by a competent authority or judicial body.

52. Illegal aliens are held at deportation centres until their legal status has been resolved. Detention procedures come under the jurisdiction of the Office of the Public Prosecutor, in accordance with article 56 of Decree Law No. 23/90, concerning the organization of the judiciary, which states that the Office of the Public Prosecutor supervises prisons and other facilities at which criminal sentences are served.

Item 16

Provide information on whether persons were tried before military courts in 1991 and whether such persons remain in prison.

53. In Kuwait, justice is dispensed by civilian courts, rather than military courts. Therefore, it cannot be claimed that civilians have been tried by military courts in normal circumstances. This principle has been given constitutional legitimacy: article 164 of the Constitution states that the law regulates different types and levels of courts and determines their functions and jurisdiction. Except where martial law is imposed, military courts only have jurisdiction to deal with offences committed by members of the Armed Forces and security services, subject to the limits established by law.

54. In the same sense, article 1 of the Judicial Organization Act (23/1990) provides that the courts adjudicate all disputes and crimes, unless otherwise stated in a special provision of law. The Act sets out the rules on the jurisdiction of the courts.

55. Article 23 of the Code of Civil and Commercial Procedure (38/1980) provides that the Kuwaiti courts have jurisdiction to hear law cases filed against Kuwaitis and against foreign nationals who are domiciled or reside in Kuwait. This does not apply to disputes over real property located abroad.

56. The records of the Ministry of Justice do not mention or refer to any cases of civilians tried before military courts in 1991, nor do they suggest that there are persons who have been in prison or detention since then in such cases.

Item 17

Provide information on the number of female prisoners and conditions of their detention.

57. Final judgements have been issued in cases involving 152 female prisoners; 72 females are in detention.

58. Kuwait welcomes international human rights organizations. It authorizes their staff to conduct visits to correctional institutions, review the situation of inmates and enquire about them in order to resolve any difficulties that they face. The General Department for Correctional Facilities (at the Ministry of the Interior) provides a number of services, including the following.

Social welfare

59. The Ministry of the Interior defines the type of work to be carried out by inmates and the methods to be used to reform them.

Health care

60. A central prison hospital has been established and supplied with state-of-the-art medical equipment. It extends health services to all prisoners.

Educational and cultural services

61. In cooperation with the Ministry of Education, the Rashad School for Intermediate and Secondary Education was established by the Department for Correctional Facilities (at the Central Prison) to provide education to prisoners.

Religious and moral education

62. In order to provide advice and guidance to prisoners, religious instruction is offered in prisons, in cooperation with the Ministry of Awqaf. A mosque with a library of religious books has been established at the Central Prison.

Employment and rehabilitation assistance

63. In order to employ and rehabilitate inmates, workshops for mechanics, carpenters, launderers, barbers and tailors have been established to train inmates for such professions and help reintegrate them into society upon release.

Financial assistance for families of prisoners

64. Under certain conditions, the State takes charge of the families and relatives of inmates. The senior management of correctional institutions endeavours to provide for such families, considering that they have lost their breadwinners and for fear that financial deprivation would expose them to delinquency.

65. Through the application of the Juveniles Act No. 3 of 1983, which regulates the treatment of children and protection of their social, legal and educational rights, the Kuwaiti legislature recognizes the special nature of childhood and the importance of treating children in a way which safeguards their dignity, allows them to be children and grants them their rights. A juvenile court has been established pursuant to the Act to hear juvenile offences and cases involving minors at risk of delinquency.

66. Since the nature of a child differs from that of an adult, the Juveniles Act provides for the establishment of care institutions for minors. Pursuant to the Act, the Juvenile Welfare Department has been established at the Ministry of Social Affairs and Labour to ensure that juveniles are treated appropriately and are held separately from adults in prison so as to prevent them from learning bad habits or immoral behaviour.

Item 18**Provide information on measures taken and investigations conducted in the event of acts of torture or cruel, inhuman or degrading treatment or punishment in prison.**

67. The Kuwaiti legislature is committed to monitoring and supervising prisons by many different methods. It has established a system for self-monitoring by penal institutions and has formulated detailed and precise rules for technical supervision and monitoring to be carried out by the Office of the Public Prosecutor pursuant to the Judicial Organization Act (23/1990). The measures introduced to monitor and supervise prisons and similar institutions are detailed hereunder.

68. Act No. 26 of 1962, concerning the organization of prisons, contains provisions on self-monitoring, including:

Article 15, which provides that the Director of Prisons may at any time carry out a prison inspection. Prisoners are entitled to talk to the Director during the inspection and voice their complaints. The Director must investigate serious complaints, take action to address the underlying causes, as necessary, and report important cases to the Ministry of the Interior;

Article 16, which states that the Director of Prisons is to dispatch inspectors from the Department of Prisons to inspect prisons and verify compliance with regulations and security, hygiene and health specifications. Inspectors are required to report to the Director and inform the prison governor of their observations;

Article 17, which states that the Minister of the Interior is required to verify that orders given by the Office of the Public Prosecutor and court judgements are enforced in the manner specified therein and that no prisoner is being detained unlawfully. The Minister is to refer complaints to the Director of Prisons, who will look into them and report back to the Minister on the results.

69. In relation to technical supervision of penal institutions, article 56 of Decree-Law No. 23 of 1990 states that the Office of the Public Prosecutor supervises prisons and other facilities in which criminal sentences are served.

70. As stated in article 184 of the Criminal Code, any person who arrests, imprisons or detains another person under conditions or following procedures not provided for by law is liable to a term of up to 3 years in prison and/or a fine of up to 225 Kuwaiti dinars (KD). If, in addition, physical torture or death threats are used, the penalty will be up to 7 years' imprisonment. Article 159 of the Code of Criminal Procedure states that if a court finds statements and confessions to have been made by a defendant under torture or duress, it shall rule that they are null and void.

71. Investigations into torture allegations are conducted promptly, impartially and effectively by both an independent body (the Office of the Public Prosecutor) and the Kuwaiti courts. If a court recognizes the right of a victim of torture to compensation from the State, the victim will receive compensation, including restitution of rights, adequate and equitable financial remedies, medical care and rehabilitation.

72. The Ministry of the Interior has established a number of rules to regulate interviews with and treatment of suspects. The rules require supervisors to monitor interviews carried out in interview rooms in order to ensure that officers and junior staff fulfil their legal responsibilities, that interviews are conducted according to law and that no violations, violence or abuse of authority take place.

Item 19

Provide information on use of force by police, including claims submitted to the courts.

73. Article 49 of the Code of Criminal Procedure provides that a police officer arresting a suspect may use force to the extent necessary to make the arrest and overcome any resistance on the part of the suspect or a third party. Nonetheless, except where the person is accused of a crime punishable by death or life imprisonment, such force may not exceed that required to prevent resistance or escape, and, it must not prove fatal.

74. Accordingly, police officers are authorized to use force only where necessary and to the extent required to make an arrest and prevent a person from escaping. Otherwise, force may not be used.

75. Investigators refer cases of the use of force by the police to the Department of Forensic Medicine, together with detailed memorandums including the statements of the victim. The memorandum is immediately placed on file by the Department and a forensic doctor will examine the victim and prepare a technical report indicating whether the injuries occurred as claimed or were self-inflicted.

76. A copy of the statistical bulletin issued by the Department of Statistics and Research at the Ministry of Justice is annexed to the present report. It includes data on the number of police officers accused of abuses from 1 January to 31 December 2009.

Item 20

Provide information on whether the interrogation of suspects or witnesses is conducted before a decision is taken in cases mentioned under items 18 and 19 above.

77. According to article 42 of the Code of Criminal Procedure No. 17 of 1960, police officers must include in an investigation record statements and arguments made by accused persons in their own defence. If the statements include a confession to a crime, they may make a preliminary record of it in their report. The accused person will be referred to an investigator for questioning in order to verify the validity of the confession. Article 98 of the Code states that if the accused is present, the investigator must ask him or her about the charges before initiating the examination procedures. If an accused person confesses to a crime, the confession must be immediately recorded in the examination report and subsequently discussed in detail. If the accused denies the charges he or she will be cross-examined after witnesses have been heard. The accused must sign the record including his or her statements after they have been read to him or her. If the accused cannot or will not sign, a note to this effect must be included in the record.

78. Accused persons may refuse to speak or may request the rescheduling of the examination or its postponement until their lawyer has arrived. They cannot be made to take an oath against their will nor may they be subjected to any form of coercion or duress.

79. Accused persons may present evidence in their defence at any time and may speak with prosecution witnesses. They may also request that defence witnesses be heard or that investigative action be taken. Their requests and defence evidence must be included in the record.

Item 21

Provide information on the authority responsible for receiving complaints made by prisoners and on measures for the follow-up of such complaints.

80. Article 15 of the Prisons Regulation Act (26/62) provides that the Director of Prisons may carry out a prison inspection at any time. Prisoners are entitled to talk to the Director during the inspection and voice their complaints. The Director must investigate serious complaints, take action to address them, as appropriate, and report important cases to the Ministry of the Interior.

81. Article 17 of the Act provides that the Minister of the Interior is required to verify that orders issued by the Office of the Public Prosecutor and court judgements are enforced in the manner specified therein and that no prisoner is being detained unlawfully. The Minister is to refer complaints received by him or her to the Director of Prisons, who will look into them and report back to the Minister on the findings.

82. Administrative measures to prevent acts of torture and abuses of power are provided for under Ministerial Decree No. 898/98, which was issued as part of the implementing regulation for a decree setting out disciplinary penalties applicable to members of the police force. Under paragraph 8 of article 1 of the decree, abuse of power and cruel treatment of the public by members of the police constitute offences that are punishable by disciplinary measures. Pursuant to the above decree, the Complaints Department of the General Department for Monitoring and Inspections at the Ministry of the Interior receives complaints from the public against Ministry employees regarding abuses of power and other disciplinary infractions listed in the Ministerial Decree and subsequent decisions. The Department investigates such complaints and punishes those found guilty of abuses.

Item 23

Provide information on regulations related to restrictions and compulsory measures imposed on patients receiving mental health care.

83. The trustees of the Executive Board of the Cooperation Council for the Arab States of the Gulf has recommended that a mental health act be passed in member States of the Council.

84. The State, as represented by the Ministry of Social Affairs and Labour, provides social welfare services for special-needs groups, such as older persons, minors and children of unknown parentage. The State is committed in particular to providing social welfare for the mentally disabled or so-called mentally challenged. A residential home and a professional rehabilitation centre have been established to respond to the needs of this group. Treatment is provided at a medical rehabilitation centre, which includes clinics specializing in dentistry, internal medicine and physiotherapy. Residents of the home for the mentally challenged and persons with physical and mental disabilities who receive day and home-based care avail themselves of the treatment provided at those clinics. The Ministry provides health care to the above groups pursuant to the decree of 7 January 1979 providing for its establishment and setting out its terms of reference (art. 2).

85. Health care for the mentally disabled is provided under the Disabilities Act and the decree establishing the Ministry. In particular, article 4 of Act No. 49 of 1996 requires the State to ensure that persons with disabilities receive continuous medical treatment in Kuwait or abroad, when necessary, and preventive services, as appropriate. The State endeavours to eliminate factors that cause disability during pregnancy and after childbirth. In cooperation with the parties concerned, the Supreme Council for the Disabled identifies disabled people who require care in their own homes. A disabled person also receives health care under the Rights of Persons with Disabilities Act No. 8 of 2010. In particular, article 7 provides that the State shall take account of the special needs of people with disabilities and treatment at all State treatment centres in the country together with preventive services, as appropriate. The State is required to eliminate causal factors leading to disability during pregnancy and after childbirth and to provide the disabled with treatment overseas when necessary.

86. Article 8 of the above Act provides that all health centres and government hospitals shall ensure the availability of trained and specialized medical and technical staff to provide treatment for persons with disabilities on an equal basis with others.

87. Kuwait also assigns specialist teams to provide home-based health care and physiotherapy to persons with disabilities. In cooperation with the competent authorities, the Supreme Council identifies persons requiring home-based care.

88. Mentally disabled persons or persons with mental impairments are also referred to as the mentally challenged.

Items 24 and 25

Provide information on whether Kuwait intends to withdraw its reservation to article 20 of the Convention against Torture and declare its approval of articles 21 and 22 thereof.

89. Kuwait has ratified the Convention against Torture and entered a reservation to article 20. This article states that if the Committee against Torture receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, it shall invite that State to cooperate in the examination of such information. In accordance with the same article, the Committee may designate one or more of its members to conduct a confidential inquiry. In agreement with the party concerned, such an inquiry may include a visit to its territory.

90. Articles 21 and 22 of the Convention authorize the State party to acknowledge, whenever it deems appropriate, the competence of the Committee to receive and consider communications submitted by States or individuals indicating that a particular State does not fulfil its obligations under the Convention.

91. Since the reservation of Kuwait is directly related to article 20 of the Convention, which sets out the terms of reference, functions and powers of the Committee, it is clear that Kuwait will not approve articles 21 and 22, since they are inextricably linked to article 20.

Item 26

Provide information on measures taken by Kuwait, if any, upon submission of its initial report on the Convention against Torture, in order to gauge its compliance with the Convention and its contribution to efforts aiming to combat terrorism.

92. Given their thematic similarity, items 26, 29 and 30 shall be discussed together in the section on item 30.

Item 27

Provide information on whether Kuwait wishes to become a party to the Optional Protocol to the Convention against Torture.

93. Kuwait considers its accession to the Convention against Torture to be sufficient, since it is a general and comprehensive convention against torture. Therefore, it prefers to simply apply the provisions of the Kuwaiti Constitution and Kuwaiti legislation on respect for human rights and the dignity of the human being and the fight against torture or ill-treatment.

Item 28

94. Under this item, Kuwait is asked whether it wishes to become party to the Rome Statute of the International Criminal Court. In this regard, a few points need to be highlighted, as set out below.

95. Through the competent authorities, Kuwait strives to play an active role and a close interest in issues related to the work of the International Criminal Court. Within the framework of the Assembly of States Parties, the authorities, including the Ministry of Foreign Affairs and the Ministry of Justice, pay particular attention to discussions on the

crime of aggression. The Standing National Committee on International Humanitarian Law, established at the Ministry of Justice, regularly follows such discussions. Kuwait has always supported moderate positions and proposals offering sensible, balanced solutions to the question of the jurisdiction of the Court. One proposal pertains to the Security Council and allowing it to play a complementary rather than a conflictual role in determining jurisdiction in crimes of aggression.

96. Kuwait's adoption and ratification of the Rome Statute are hampered by a number of constitutional and legislative obstacles; substantive amendments need to be made to the Kuwaiti Constitution and Kuwaiti legislation and submitted to the National Assembly for approval. The amendments then need to be written into a law prior to their incorporation in Kuwaiti legislation.

97. Such constitutional procedures are completely at variance with the provisions of articles 9 and 51 of the Rome Statute. Article 9 of the Statute authorizes the Assembly of States Parties to identify the elements of crimes falling under the jurisdiction of the Court; it also states that such elements shall be adopted by a two-thirds majority of the members of the Assembly. Furthermore, article 9 authorizes amendments to these elements, if approved by a two-thirds majority of the members of the Assembly of States Parties. This implies that the elements of crimes or amendments thereto have binding force for all States parties without any need for ratification. In other words, they acquire binding force, even if they have not been submitted to the competent national authorities for ratification and the State has not approved the proposed amendments. This also applies to article 51 of the Rome Statute.

98. In this regard, it cannot be argued that article 121 of the Statute allows for the introduction of amendments or authorizes a State which does not accept amendments to withdraw from the Statute. In fact, article 121 does not supersede articles 9 and 51, since the amendments provided for under both articles are not subject to article 121.

99. Kuwait has ratified various international conventions on most crimes prohibited by the Rome Statute, which demonstrates that the Kuwaiti approach is not incompatible, in any way, with the purposes and principles of the Statute. Any existing incompatibility would be merely procedural. The following are a number of conventions to which Kuwait is a party:

- The Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (Decree-Law No. 1 of 1995)
- The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (Decree-Law No. 3 of 1995)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 1 of 1996)
- The Geneva Conventions, signed on 12 August 1949 (Decree-Law of 1967); Kuwait has also acceded to the Additional Protocols to the Geneva Conventions

Item 29

100. As previously noted, the responses to items 26, 29 and 30 shall be combined.

Item 30

Provide information on political, administrative and other measures taken for the promotion and protection of human rights at the national level following the

consideration of the initial report submitted by Kuwait on the implementation of the Convention against Torture.

101. Kuwait has acceded to a number of international human rights treaties, which were integrated into domestic legislation upon completion of the necessary constitutional procedures.

102. Kuwait participates in human rights seminars and conferences. Furthermore, Kuwaiti delegations abroad contribute efficiently to meetings held by the United Nations, the League of Arab States and other organizations.

103. In addition to backing resolutions adopted by the United Nations and its agencies, funds and programmes in order to promote human rights principles and norms throughout the world, Kuwait supports international humanitarian efforts to alleviate human suffering. It provides material and moral support for a number of international committees and organizations and includes an item in the annual budget of the Ministry of Foreign Affairs to provide support to, for example, the following:

- The International Committee of the Red Cross
- The Office of the United Nations High Commissioner for Human Rights
- The United Nations High Commissioner for Refugees
- The International Organization for Migration

104. Kuwait makes regular and continuous donations to the activities of United Nations agencies, funds and programmes, as follows:

- The United Nations Development Programme
- The United Nations Children's Fund
- The United Nations Fund for Drug Abuse Control
- The United Nations Environment Programme
- The United Nations Institute for Training and Research
- The United Nations Voluntary Fund for Victims of Torture
- The United Nations Development Fund for Women
- The United Nations Fund for Population Activities

105. Furthermore, Kuwait has concluded several headquarters and cooperation agreements with international institutions dealing with human rights issues, such as the following:

- The International Committee of the Red Cross
- The International Labour Organization
- The United Nations Development Programme
- The United Nations Assistance Mission for Iraq
- The United Nations High Commissioner for Refugees

106. Units have been established at a number of Government departments to deal with human rights issues. These departments include the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior, and the Ministry of Social Affairs and Labour. Several governmental committees deal with human rights, as explained below.

The Ministry of Foreign Affairs

107. An ad hoc committee headed by the Ministry of Foreign Affairs and including national actors concerned was set up to prepare the Government's report on the universal periodic review process conducted under the auspices of the Human Rights Council. Considering the importance of transparency and objectivity, civil society institutions were involved in the preparation of the report, participating in interactive dialogue and exchanges of comments and suggestions.

The Ministry of Justice

108. The Ministry of Justice has established a human rights special section as part of the administrative and organizational structure of the Department of International Relations. The section is required to:

- Prepare replies to allegations and observations about human rights as contained in letters or reports drafted by governmental and non-governmental international organizations and local bodies
- Cooperate with international human rights organizations and associations, for the general benefit of Kuwait
- Liaise with the governmental authorities in order to remain updated on national developments in human rights and to be able to develop a unified, comprehensive and objective vision which brings together different views, approaches and policies on human rights in Kuwait
- Issue opinions on international conventions, declarations and resolutions on human rights, in coordination with the International Treaties Department
- Issue opinions on the revision of existing domestic legislation, whether for practical considerations or pursuant to international commitments, in keeping with the Constitution and the human rights principles embodied in contemporary international law

109. In coordination with the Ministry of Foreign Affairs and other authorities, the Department of International Relations plays a significant role in the conduct of legal and judicial research and studies on accession to and ratification of various international instruments, primarily those dealing with the promotion of human rights and fundamental freedoms. Furthermore, the Department issues comments and drafts reports and memorandums on human rights and fundamental freedoms at the national, regional and international level. In this way, it seeks to support efforts by the Ministry of Justice to promote human rights in Kuwait and thus improve Kuwait's standing in international forums in general and in the field of human rights in particular.

110. Pursuant to Ministerial Decree No. 86 of 2003, an ad hoc committee was established at the Ministry of Justice to consider human rights reports issued by international organizations. The Committee develops rules for providing responses to international human rights reports by governmental or civil society organizations, when the reports touch upon the principles and provisions of Islamic law, the Kuwaiti Constitution, domestic legislation, or the values, culture and identity of Kuwaiti society. The committee includes a number of experts in this field.

111. In accordance with Ministerial Decree No. 93 of 2005, the Ministry of Justice furthermore established a committee to consider human rights reports issued by international organizations. Its tasks include considering international reports issued by governmental civil society, or other actors on human rights in Kuwait; communicating with the authorities to ascertain the veracity of abuses or complaints reported to it regarding

human rights in Kuwait; and cooperating with the authorities to remedy or end abuses which have been proved to have occurred, in the light of the Kuwaiti Constitution and national legislation. The committee includes a number of experts in this field.

112. With a view to keeping abreast of international developments and trends in relation to the principles and norms of international humanitarian law and to ensuring respect for human rights in all circumstances and situations, the Ministry of Justice issued Ministerial Decree No. 244 of 2006, establishing a standing national committee on international humanitarian law to deal with a number of issues, notably the following:

- Reviewing domestic legislation regarding international humanitarian law and its application by the courts, in the light of Kuwait's obligations under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1997
- Enhancing the implementation of international humanitarian law in Kuwait
- Making recommendations and suggestions and providing advice to national actors and institutions on the implementation of international humanitarian law
- Designing plans, training programmes and seminars to raise awareness of international humanitarian law, and working to establish a specialized library of works thereon

113. In furtherance of such efforts, Kuwait, as represented by the Ministry of Justice, established the Higher Committee for Human Rights, chaired by the Minister of Justice and the Minister of *Awqaf* and Islamic Affairs. The Committee members include senior officials and experts from ministries concerned with human rights issues (the Ministry of Justice, the Supreme Council of the Judiciary, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Social Affairs and Labour, the Ministry of *Awqaf* and Islamic Affairs, the Ministry of Education, the Office of the Public Prosecutor and the University of Kuwait). All parts of the executive that deal with human rights are represented in the Higher Committee for Human Rights.

114. In this regard, the Ministry of Justice issued a number of ministerial decisions, including the following:

- **Ministerial Decree No. 104 of 15 April 2008**, establishing the Higher Committee for Human Rights. Article 2 of the decree sets out the terms of reference of the Committee, which include the following:
 - (a) To review existing regulations and laws and propose amendments to reflect the evolution of legal human rights norms at the international level, in conformity with Islamic law;
 - (b) To devise a national plan involving the public sector and Government institutions, with the aim of promoting human rights and their observance, and to propose policies and mechanisms for the realization of the plan;
 - (c) To promote human rights through the media and integrate fundamental human rights concepts into school and university curricula.
- **Ministerial Decree No. 169 of 18 May 2008**, concerning the membership of the Higher Committee on Human Rights. The Decree deals with the selection of Committee members and their qualifications, and determines the tasks and functions of its secretariat.
- **Ministerial Decree No. 360 of 9 November 2008**, concerning the composition of the secretariat and membership of subcommittees of the Higher Committee for Human Rights.

- **Ministerial Decree No. 361 of 9 November 2008**, concerning the rules of procedure of the Higher Committee for Human Rights. Article 12 states that the following three subcommittees are to assist the Higher Committee in the performance of its tasks:
 - The Local Follow-up Committee
 - The International Liaison Committee
 - The Committee for Human Rights Mainstreaming

The Ministry of the Interior

115. The Ministry of the Interior is one of the most important executive institutions which has direct contact with citizens and resident aliens. Accordingly, and in line with the overall trend to support human rights safeguards, the Higher Committee for Human Rights was established at the Ministry pursuant to Ministerial Decree No. 1988 of 18 October 2001. However, even before then, the work of the Committee was already being done, as early as 1992 by a working group at the Ministry of the Interior. The working group liaised with the Committee for the Defence of Human Rights at the National Assembly in receiving, examining and responding to complaints.

Terms of reference of the Committee for Human Rights

116. The Committee follows up on complaints about human rights violations submitted to the Ministry of the Interior by institutions, such as the Ministry of Foreign Affairs and the National Assembly, or by individuals. It drafts reports on complaints and submits them to the Minister of the Interior. In order to establish the truth regarding such violations, it may conduct investigations and propose solutions. In its capacity as a representative of the Ministry in this area, it may also respond to queries in relation to the complaints. It also has the right to review ministerial decisions that adversely affect complainants. It can request any ministerial office to provide it with any information or data related to its work. All these offices must provide the Committee with the facilities, information and data that it needs to carry out its tasks. The Committee may employ whomever it deems qualified to carry out its work.

The Ministry of Social Affairs and Labour

117. Kuwait is bound by a number of conventions adopted by the International Labour Organization (ILO). Representatives of the relevant institutions in particular, the Ministry of Social Affairs and Labour, attend ILO training courses and conferences. Furthermore, Kuwait endeavours to implement ILO decisions and recommendations; a cooperation and headquarters agreement was concluded between Kuwait and ILO in order to enhance cooperation and coordination of efforts concerning labour and employees.

118. Recently, a new labour law was issued; it provides benefits for workers and safeguards for both employees and employers.

119. The new Act No. 6 of 2010 on employment in the private sector establishes a mechanism for the settlement of labour disputes. It grants workers a number of rights, primarily the right to assert a priority claim on the assets of an employer, whether movable or real property, excluding the private home. Prior to initiating legal action, workers or their eligible dependents must submit a claim to the relevant labour authority, which must convoke the parties to the dispute or their representatives. If within one month of the date of submitting the claim the authority fails to settle the dispute amicably, it shall refer the claim to a court of first instance for a decision. The referral document shall consist in a memorandum containing a summary of the dispute, defence statements and the

observations of the authority concerned. Within three days of receiving the claim, the registry of the court must schedule a hearing; the parties to the dispute will then be notified.

Civil society

120. A number of Kuwaiti public-interest organizations deal with human rights, such as the Kuwait Human Rights Society, the Kuwait Society for Developing Democracy and the Kuwaiti Society for the Defence of Public Funds. These organizations promote respect for and raise awareness of human rights and public freedoms, organize lectures and forums to disseminate human rights norms and play an effective role in the development of society.

The judiciary

121. Article 162 of the Constitution highlights the importance of the honour, integrity and fairness of the judiciary as a basis of governance and a guarantee of rights and freedoms. It states 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.

122. To ensure the impartiality of the judiciary, the Constitution states, in article 163, that judges are independent and may not be removed from office and are not subject to any (external) authority.

123. Article 166 of the Kuwaiti Constitution affirms that everyone, without discrimination or distinction, has the right to initiate legal proceedings at all levels. A victim of human rights violations has the right of recourse to the Kuwaiti courts to seek judicial protection. A victim may bring a case before the Office of the Public Prosecutor concerning a violation of his or her rights under the Kuwaiti Constitution. He or she may also demand reparation and compensation for any physical or emotional damage suffered.

124. In order to enhance judicial protection of the Constitution, Act No. 14 of 1973 was passed to provide for the establishment of the Constitutional Court. The Court has indeed become a constitutional and judicial haven which guarantees protection of the law and the Constitution and the proper interpretation of the Constitution. Article 1 of the Act states that it is the only court concerned with the interpretation of the Constitution and the settlement of disputes over the constitutionality of laws, decree-laws, regulations and appeals related to the election or competence of members of the National Assembly. Rulings issued by the Constitutional Court are binding on the public and all the other courts.

125. The Kuwaiti judiciary is fair, impartial and objective. It has become a fair and safe haven for all those whose rights and freedoms have been violated in Kuwait. The Kuwaiti judiciary has issued numerous highly objective, impartial and fair rulings.

126. Through the Ministry of Justice and other judicial authorities, Kuwait ensures the strict application of the Kuwaiti Criminal Code No. 16 of 1960 and the Code of Criminal Procedure No. 17 of 1960, as amended, notably in cases of abduction, detention, slave trafficking, sexual misconduct, indecent assault, incitement to debauchery and prostitution, exploitation and physical abuse. This is fully consistent with article 167 of the Kuwaiti Constitution, which requires the Office of the Public Prosecutor to initiate legal action on behalf of society, and to oversee the work of the police, the enforcement of criminal laws, the prosecution of offenders and the execution of sentences.

127. Highlighting the evolution of judicial protection frameworks and measures, article 173 (of the Constitution) states that the law will determine which judicial authority is competent to adjudicate disputes over the constitutionality of laws and regulations and its jurisdiction and rules of procedure. The law ensures the right of the Government and other parties to challenge the constitutionality of laws and regulations before the relevant judicial

authority. Laws and regulations will be considered null and void, if the authority decides that they are unconstitutional.

Kuwait and the fight against torture

128. Kuwait ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pursuant to Act No. 1 of 1996, which entered into effect upon publication in the Official Gazette on 15 January 1996.

129. Upon accession, Kuwait entered two reservations to the Convention against Torture. First, it expressed its refusal to recognize the competence of the Committee against Torture provided for under article 20 of the Convention. Second, it expressed its objection to paragraph 1 of article 30 of the Convention, which provides for arbitration in the event of a dispute between two or more States parties over the interpretation or application of the Convention. The same article states that a dispute may be referred to the International Court of Justice, if the States parties involved fail to agree on the organization of the arbitration.

130. Pursuant to article 70 of the Kuwaiti Constitution, the Convention was integrated into domestic legislation following ratification. Since then, it has acquired the force of domestic law.

131. At the domestic level, there are a number of constitutional and legal provisions on combating all forms of torture under all conditions. These provisions also seek to prevent unlawful restrictions on human freedom and to suppress torture and inhuman or degrading treatment. Articles 31, 32, 33 and 34 of the Constitution condemn all types and manifestations of abuse. Emphasizing the principle of the individual nature of penalties, they state that no punishment may be imposed if not provided for by law and that accused persons are presumed innocent until proven guilty. These provisions are listed below:

Article 31: no person may be arrested, detained, searched, compelled to reside in a specified place, or subjected to restrictions on his or her freedom of residence or movement except in accordance with the law. No person may be subjected to torture or degrading treatment.

Article 32: no crime or penalty can be established except under the law; a penalty may be imposed only for offences under a law in force.

Article 33: penalties are to be imposed on the individual.

Article 34: accused persons must be presumed innocent until proven guilty in a legal trial at which guarantees for the exercise of the right to defence are afforded. Inflicting physical or moral harm on an accused person is prohibited.

132. Article 53 of the Kuwaiti Criminal Code No. 31 of 1970 echoes these principles; it states that the penalty of imprisonment shall be imposed on a public official or employee who, personally or through a third party, tortures an accused person, a witness or an expert, to compel him or her to confess to a crime, make a statement or give information. If the torture proves fatal, the perpetrator will be subject to the penalty prescribed for intentional homicide.

133. In the same sense, article 56 of the Code states that a term of imprisonment will be imposed on a public officer, an employee or a person performing a public service who abuses his or her power and subjects others to cruel treatment that is degrading to them or causes them physical pain.

134. Articles 160–166 of the Kuwaiti Criminal Code classify acts of physical harm to persons as offences.

135. The aforementioned provisions were formulated pursuant to article 30 of the Kuwaiti Constitution, which states that no person may be arrested, detained, compelled to reside in a specified place, or subjected to restrictions on his or her freedom of movement, except in accordance with the law. They are also in conformity with article 60 of the Kuwaiti Code of Criminal Procedure (No. 17 of 1960), which requires the police to refer accused persons to the relevant investigating authority and spells out in detail the procedures for and duration of pretrial detention.

136. The above paragraphs include just a few examples of the different facets of constitutional, legal, judicial and criminal justice and how they contribute to prohibiting torture and combating it in all its forms and manifestations. There are many other legal and judicial texts and provisions which fall outside the remit of this report.

Item 31

137. In the concluding part of the list of issues, the Committee against Torture requested information on the implementation of the Convention and the Committee's previous recommendations with respect to Kuwait's initial report.

138. At the outset, we should like to summarize the recommendations made by the Committee against Torture (A/53/44) in response to Kuwait's initial report. The recommendations are listed as follows:

- That Kuwait should consider withdrawing its reservations to article 20 of the Convention
- That Kuwait should declare in favour of articles 21 and 22 of the Convention
- That Kuwait should consider enacting in its Criminal Code a defined crime of torture

139. In response to the above recommendations, Kuwait should like to state the following.

140. With respect to the first and second recommendations, Kuwait refers to its responses to items 24 and 25 above.

141. With respect to the third recommendation on a defined crime of torture in the Criminal Code, the following points need to be highlighted.

142. At the outset, reference is made to the response to item 6 above. Reference is also made to article 1, paragraph 1, of the Convention, which includes a comprehensive definition of acts of torture. It states: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

143. Kuwait has ratified the Convention and, therefore, as soon as the Convention was approved under a domestic law (No. 1/96), it automatically became part of Kuwaiti legislation (Constitution, art. 70). Consequently, the above definition of torture is applied by the legal systems of all the countries which have ratified the Convention, and it makes up for any deficiencies in their legal provisions or definitions.

144. The above point is made in paragraph 2 of the same article, which states: “This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.” This means that the accepted definition of torture is the one found in article 1 of the Convention, as long as there are no definitions of wider application than that provided for under the Convention, whether such definitions are provided for under domestic legislation or international instruments. Such instruments are considered the exception and the Convention constitutes the primary source.

145. Furthermore, the Criminal Code No. 31 of 1970, amending certain provisions of the Criminal Code No. 16 of 1960, devotes most of part III, specifically articles 53–58, to acts of abuse against individuals by public officials.

146. The Kuwaiti Criminal Code (16/60) and amendments thereto (No. 31/70) contain a separate general section on penalties (arts. 149–185) entitled “Offences against the person”. They list each act with a direct or indirect link to offences classified as torture, including murder, wounding, abuse, abortion, kidnapping and detention.

147. Therefore, the definition of torture provided for under the Convention is wide in scope and sufficiently comprehensive.
