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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023

Opinion No. 28/2023 concerning Bachar Kiwan (Kuwait)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 5 December 2022 the Working Group transmitted to the Government of Kuwait a communication concerning Bachar Kiwan. The Government replied to the communication on 2 February 2023. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Bachar Kiwan is a dual French-Syrian national, born on 30 November 1966 in Kuwait. Reportedly, Mr. Kiwan launched and presided over a press group project in Kuwait, Al Waseet International, which grew quickly in the Gulf region.

Background

5. The Al Waseet International group is composed of Al Waseet International K.S.C.C., Kuwait United Company for Advertising, Publishing and Distribution K.C.S. and Comoro Gulf Trading S.A.R.L. According to the source, Mr. Kiwan owns the majority of the shares in the Al Waseet International group and various members of the royal family own shares in the company.

6. The source reports that, in 2016, the Kuwaiti royal family used the State apparatus to dismiss Mr. Kiwan from the Al Waseet International group, expropriated his holding in the company and violated his fundamental rights in order to use the group for large-scale financial embezzlement.

7. On 18 September 2016, the son of the former Prime Minister of Kuwait reportedly made a firm offer to Mr. Kiwan to buy his shares for a price that had been set unilaterally. As a result of Mr. Kiwan's refusal, the royal family used the executive and judicial branches of the State to intimidate Mr. Kiwan.²

8. The source explains that in January 2017, the son of the former Prime Minister seized real estate belonging to Mr. Kiwan, with no legal consequences. Mr. Kiwan's publication licence was later withdrawn and his complaints rejected. He was banned from leaving Kuwait but faced expulsion threats, was placed under administrative surveillance and was threatened. Members of his family were also reportedly harassed by the authorities.

9. The son of the former Prime Minister allegedly filed many complaints against Mr. Kiwan, which led the judiciary to condemn Mr. Kiwan five times. Conversely, after Mr. Kiwan filed a complaint in February 2017 to denounce illicit flows, he was reportedly subjected to administrative harassment and his complaints were systematically rejected.

10. Reportedly, the Kuwaiti bank account of the Comoro Gulf Trading company, of which Mr. Kiwan is the majority shareholder, was sequestered by State bodies. Mr. Kiwan attempted to oppose these acts, but the Central Bank reportedly refused to accept any documents. Allegedly, a member of the ruling family, who owns 5 per cent of the Comoro Gulf Trading shares, falsely claimed that he held 99 per cent of the company's capital. Based on this allegation alone, the judge approved the sequestration.

11. Similarly, Mr. Kiwan's complaint before the Governor of the Central Bank and the Fatwa and Legislation Department to end the misuse of the assets of the Al Waseet International companies was rejected and he was reportedly dismissed from the management of his company.

12. Instead of cancelling the transactions and illicit financial flows or having recourse to the supervisory authorities, the judiciary proceeded to examine the royal family's claim against Mr. Kiwan, his entourage, family and lawyers of using false private documents for personal purposes.

13. At the end of December 2016, the State Prosecutor filed a complaint against Mr. Kiwan and three other directors of the Kuwait United Company for Advertising, Publishing and Distribution and proceedings were initiated based on the royal family's claim regarding the use of false private documents for personal purposes. The source alleges that through these proceedings, the judiciary was instrumentalized to target Mr. Kiwan, other directors of the company and a former director.

² Allegedly, a tweet was posted stating, "Bachar Kiwan, the Syrian thief, you will see what I will do, but Cheikh Fahd wants me to wait hahahaha".

14. The State Prosecutor reportedly alleged that not everyone mentioned in the minutes of the board meeting was physically present. Despite the lack of conclusive evidence and the fact that Mr. Kiwan did not write those minutes, he was sentenced to five years in prison on 1 November 2017 and a decision was made to expel him from the country once he had completed his sentence, effectively implying the expropriation of Mr. Kiwan's interests in Al Waseet International.

a. Arrest and detention

15. On 2 November 2017, at 6 p.m., six individuals in civilian clothes reportedly arrested Mr. Kiwan on the premises of his company. Reportedly, he was not shown an arrest warrant or given an explanation of the reasons for his arrest. According to the source, the individuals searched his office, took files and forced Mr. Kiwan to open his safe in order to seize its contents. His telephones and computer were also seized and he was taken to the individuals' car.

16. Once in the car, Mr. Kiwan realized he was being arrested by the secret services and asked for an explanation of what was going on. He was reportedly given no answer and taken to his apartment, where his home was searched and his papers and safe seized. Mr. Kiwan was then taken to the premises of the secret services.

17. Reportedly, Mr. Kiwan was held in isolation for three days, during which time he was not allowed to talk to anyone and was regularly beaten, slapped, insulted and humiliated. After three days, he was reportedly directed to accept the royal family's requests to avoid suffering a heavy toll. The source explains that Mr. Kiwan was interrogated while he was blindfolded and handcuffed to a chair and asked about financial flows that were qualified as terrorist acts. When Mr. Kiwan asked for a lawyer, the officers interrogating him laughed and said he was in the house of the royal family where he had no rights.

18. Between 5 November and 19 December 2017, Mr. Kiwan was detained and regularly interrogated while handcuffed and blindfolded, beaten, slapped, insulted and humiliated. Reportedly, he was forced to disclose his passwords so that the secret services could log into his private and professional messages, photographs, emails and social networks. Mr. Kiwan was reportedly also interrogated about his family, entourage and friends. He was never asked to sign the minutes of his answers and was told that the secret services were waiting for orders, that he might be executed as a traitor and that he and his family would be punished for challenging the royal family.

19. On 13 November 2017, Mr. Kiwan's lawyers appealed the judgment against their client and requested his release, together with another two of the five individuals charged. While those two defendants were allowed to be represented by their lawyers, the Court of Appeal considered that Mr. Kiwan could be judged in absentia with no mention of his defence and rejected his appeal.³ On 21 September 2020, the Court of Cassation confirmed the reasoning of the Court of Appeal.⁴

20. On 19 December 2017, Mr. Kiwan was reportedly told by the secret services that he would be transferred to the central prison. The next day, he was driven by members of the secret services to his home and given 48 hours to collect his belongings before being taken to prison, during which time he would be under surveillance and his phones tapped. Mr. Kiwan decided to leave the country and on 27 December 2017, having lost faith in the State apparatus and fearing for his safety, he fled to Iraq, Lebanon and finally France.

21. After arriving in France, Mr. Kiwan travelled to Dubai for personal reasons. On 21 January 2018, the son of the former Prime Minister of Kuwait allegedly issued an international arrest warrant and made an extradition request asking that he be delivered to Kuwait from Dubai. On 8 October 2018, the Dubai Court of Appeal rejected the request.

22. The source reports that, in retaliation, the Kuwaiti authorities filed a case against several members of Mr. Kiwan's family and entourage, who were arrested and tortured to reveal the name of the person who had helped Mr. Kiwan flee the country. Allegedly, once

³ Kuwait Court of Appeal, decision No. 4210/2017/8 – 622/2016 – 686/2016, 20 January 2020, p. 4.

⁴ Kuwait Court of Cassation, second criminal chamber, decision No. 163967870, 21 September 2020.

the name was revealed, that individual went missing. Furthermore, two of Mr. Kiwan's family members who had been arrested were kept in detention until October 2020.

23. Although Mr. Kiwan was no longer in Kuwait, he was condemned in absentia four times to sentences allegedly disproportionate to the acts he was accused of committing, which were mainly using false documents for private purposes. Reportedly, the convictions against Mr. Kiwan, his family and other directors and members of the board of Al Waseet International were so fallacious and baseless that they attracted international media attention.

24. While in France, Mr. Kiwan reportedly sent three letters on 18 December 2018, 27 February 2019 and 24 March 2020 to the Kuwaiti ambassador to France to alert him about the actions of the authorities, but in vain.

25. On 6 March 2019, while Mr. Kiwan was in Spain, the son of the former Prime Minister of Kuwait reportedly made an extradition request for Mr. Kiwan and he was arrested by the competent authorities. On 13 February 2020, the Spanish judiciary rejected the extradition request based on the considerable risk that his rights would be violated in the light of the evidence provided, which attested to the practice of torture and violations of fair trial rights in Kuwait.⁵

26. The source notes that Mr. Kiwan has initiated arbitration proceedings against Kuwait with the International Centre for Settlement of Investment Disputes regarding the losses suffered by his company.

Legal analysis

i. Category I

27. The source argues that the authorities violated Mr. Kiwan's rights under article 9 of both the Covenant and the Universal Declaration of Human Rights.

28. The source argues that secret detention, especially by the secret services, violates international human rights law and cannot be enforced even pursuant to a criminal judgment.⁶

29. The source submits that Mr. Kiwan was detained on the premises of the secret services from 2 November to 20 December 2017, during which time he was regularly interrogated under torture. Mr. Kiwan was reportedly not told of the reasons for his detention but was told by the secret services that they were awaiting orders from the royal family and that they might execute him. The source contends that the judgment of 1 November 2017 against Mr. Kiwan cannot justify his secret detention on the premises of the secret services.

30. The source adds that the judgment of 1 November 2017 cannot legitimately justify Mr. Kiwan's detention, as it was delivered outside any legal framework, in violation of international law. Specifically, it recalls that Mr. Kiwan was sentenced to five years in prison for having supposedly signed a false document during a board meeting of the Kuwait United Company for Advertising, Publishing and Distribution, at which two people mentioned in the document were allegedly not present. The source contends that in the complaint it was falsely claimed that the son of the former Prime Minister owned 33 per cent of the shares in the company when supporting documents show that he only owned 1 per cent. The source also notes that the allegedly false document signed by Mr. Kiwan could have been rectified without any civil or criminal violation insofar as the Court of Cassation, in a ruling dated 10 May 1992, found that subsequent approval was equivalent to the delegation of the previous authority.

31. The source contends that the Prosecutor should have thus discontinued the investigation and dropped charges. Nevertheless, proceedings were initiated against Mr. Kiwan four days after the complaint was filed, although the normal procedure for registering and processing complaints usually takes two months to be transferred from the General Counsel's Office to the Complaints Handling Office, forwarded to the relevant Prosecutor's

⁵ Spanish Chamber of Criminal Cases, section II, order No. 4/2020, 13 February 2020.

⁶ [A/HRC/16/47](#), para. 54.

Office and sent to the Directorate of Prosecutions. According to the source, had this complaint been filed by an ordinary citizen Mr. Kiwan would not have been prosecuted.

32. The source also submits that a five-year sentence is disproportionate, particularly given the weakness and irrelevance of the allegations against Mr. Kiwan.

33. According to the source, Mr. Kiwan continued to be convicted on spurious grounds, including on 28 March 2019, when he was sentenced to 10 years in prison for migrant smuggling because he fled Kuwait. Allegedly, he was sentenced to a total of 31 years' imprisonment and 14 years of forced labour without ever having committed any criminal offence.⁷

34. The source further submits that Mr. Kiwan was subjected to administrative harassment before even being convicted, while being prevented from challenging the administrative acts against him and from filing complaints, in violation of international norms and requirements.

35. According to the source, these occurrences were inappropriate, unfair, unpredictable and unlawful, and were aimed at dismissing Mr. Kiwan from Al Waseet International so that members of the royal family could take full control.

36. The source notes that the above facts reflect a common practice in Kuwait and that international sources have stated that the corruption of public officials benefits the most influential figures in Kuwait and adversely affects the fulfilment of human rights, including the right to be free from arbitrary detention.

37. Further, the source recalls that article 9 (2) of the Covenant provides that individuals arrested should be informed, at the time of arrest, of the reasons for the arrest and be promptly informed of the charges against them. Article 48 of the Code of Criminal Procedure of Kuwait allows for an arrest warrant to be ordered orally if it is carried out in the presence and under the responsibility of the decision maker. The source considers that this increases the risk of arbitrary arrest and detention and adds that, in any event, the mere fact that a judicial order may have been issued does not mean that the authorities executing it presented it or explained its content.⁸

38. The source argues that Mr. Kiwan was not informed of the reasons for his arrest on 2 November 2017, the oral warrants against him were never explained or presented to him and he was detained and tortured for 48 days by the secret services without ever being notified of the charges against him. The source contends that there was no evidence that Mr. Kiwan wished to evade the authorities nor any other objective factor to justify his secret detention on the premises of the secret services and that the judgment of 1 November 2017 did not order such a detention.

39. The source further notes that the Human Rights Committee has stated that secret detention violates article 9 (3), as it prevents a detainee from being promptly brought before a judicial authority and not a prosecutorial one, which cannot be considered a judicial authority. Further, the Human Rights Committee has consistently found a violation of article 9 (3) of the Covenant when a person is only brought before a judge after some days in detention. The source also recalls that article 9 (4) guarantees the right of everyone deprived of their liberty to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order the individual's release if the detention is unlawful.

40. According to the source, although Mr. Kiwan asked he was not brought before a judge once during his 48-day detention, from 2 November to 20 December 2017. He was held in secret and prevented from contacting his family and friends, although he was allowed to communicate with a family member after more than a week in detention.

⁷ Kuwait first instance court, judgments No. 686/2016, 1 November 2017; No. 139/2017, 26 December 2017; No. 1197/2017, 19 June 2018; No. 23/2018, 11 March 2019; No. 105/2018, 28 March 2019; and No. 4210/2017/8 – 622/2016, 20 January 2020.

⁸ Opinion No. 54/2020, para. 83.

41. The source concludes that Mr. Kiwan's detention violated article 9 of the Covenant and was arbitrary under Category I.

ii. Category III

42. The source first submits that Mr. Kiwan was not heard before an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. It argues that the right to a fair trial requires that domestic legislation provide for procedural safeguards in terms of remedies and separation of powers, but also that these be effectively enforced.

43. According to the source, the corruption of some officials in the police, the judiciary, the legislature and other State institution causes a discrepancy between the formal recognition of human rights instruments and their effective implementation.⁹ Allegedly, the Kuwaiti judiciary is particularly at risk of manipulation as it is not fully independent of the executive branch. The source recalls that the Human Rights Committee has highlighted the insufficient independence of the judiciary from the executive branch in such matters as the appointment, promotion and disciplining of judges, as well as the lack of security of tenure of foreign judges. It has called on Kuwait to guarantee the independence, autonomy and impartiality of the judiciary by reforming the system of appointment, promotion and disciplining of judges, and to ensure the security of tenure of foreign judges.¹⁰

44. The source also notes the recommendation by the universal periodic review that the Government take measures to prevent arbitrary detention and abuses by the authorities and ensure effective due process and the avoidance of systematic and sustained pretrial detention.¹¹

45. According to the source, the fundamental legal safeguards of detainees are not guaranteed from the outset of their detention and, for example, contacting a lawyer and contacting a family member may be mutually exclusive.

46. The source argues that the judgment of 1 November 2017 against Mr. Kiwan was politically motivated and rendered by an inefficient court that lacked independence, as evidenced by the fact that three of the five judgments against Mr. Kiwan (on 1 November 2017, 19 June 2018 and 28 March 2019) were issued by the same judges.

47. The source notes that the Spanish High Court refused to extradite Mr. Kiwan to Kuwait, reasoning, *inter alia*, that there existed a risk of persecution by the highest authorities of the State because the applicant was the son of the former Prime Minister; because of the number of proceedings initiated at the latter's request against Mr. Kiwan and members of his entourage, family and lawyer; and because of the number of reports published by international human rights organizations and associations.

48. The source further argues that forced confessions contaminate the entire judicial process, even if other evidence is available to support the verdict.¹²

49. Allegedly, Mr. Kiwan was questioned by the secret services while blindfolded and handcuffed to a chair, and was beaten, slapped, insulted and humiliated in order to force him to disclose his professional and private passwords. Reportedly, he was not only interrogated about the supposedly illicit flows but also about his family, entourage and friends. Although minutes of his answers were recorded, he was never asked to sign them. Such answers were nonetheless used by the prosecution against Mr. Kiwan during the appeal against the judgment of 1 November 2017 and before the Court of Cassation.

50. The source also submits that any denial of the right to be tried in one's presence must be limited and duly justified.¹³

51. Allegedly, the appeal against the judgment of 1 November 2017 and the subsequent appeal before the Court of Cassation took place in *absentia*, despite the seriousness and

⁹ A/HRC/10/21, paras. 58 and 59.

¹⁰ CCPR/C/KWT/CO/3, paras. 30 and 31.

¹¹ A/HRC/44/17.

¹² See opinions No. 34/2015 and No. 54/2020.

¹³ Opinion No. 60/2020, para. 94.

disproportionality of the sentence and the ensuing necessity to protect the rights of the defence. According to the source, these factors were cited by the Spanish High Court in rejecting the request for Mr. Kiwan's extradition.¹⁴

52. Accordingly, the source concludes that the authorities violated article 14 (3) (d) and (g) of the Covenant and article 10 of the Universal Declaration of Human Rights.

53. In addition, the source contends that between September 2016 and November 2017, Mr. Kiwan's lawyers were pressured by the authorities to stop representing him and withdrew from his case. On 11 March 2019, two of Mr. Kiwan's lawyers were reportedly prosecuted and sentenced to three months' imprisonment and a fine, without legal representation, for damaging the name and reputation of a member of the royal family due to the publication of a press release recounting the lawsuits against Mr. Kiwan.

54. The source considers that such intimidation of Mr. Kiwan's lawyers, who were merely carrying out their function of legal defence, constitutes a serious interference with his right to legal assistance, contrary to article 14 (3) (b) and (d) of the Covenant and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court.

55. The source further recalls that while the Working Group is not a jurisdiction of last resort and does not assess the sufficiency of the evidence presented at trial, it is not prevented from verifying that the evidence presented is taken into account during a trial.¹⁵

56. Reportedly, Mr. Kiwan's defence presented numerous pieces of evidence that the meeting of the board of directors of the Kuwait United Company for Advertising, Publishing and Distribution was not a forgery. Nonetheless, he was found guilty and given a disproportionate sentence. The Court of Appeal decided to try him in absentia, made no mention of the defence or the evidence it had submitted and confirmed the judgment. The Court of Cassation later confirmed the reasoning of the Court of Appeal.

57. According to the source, the exclusion of the exculpatory evidence produced by Mr. Kiwan from the beginning of the proceedings violates article 14 (3) (e) of the Covenant and article 10 of the Universal Declaration of Human Rights.

58. Further, the source notes that article 10 of the Covenant requires that individuals deprived of their liberty be treated with humanity and respect for their inherent dignity. It argues that incommunicado detention is unlawful, may in itself amount to torture¹⁶ and creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷

59. Reportedly, during his detention Mr. Kiwan was beaten, slapped, insulted and humiliated for 48 days. He was held without contact with and completely cut off from the outside world for the first seven days of his detention, after which he was allowed to make one phone call each week.

60. Such treatment allegedly caused such weight loss and scars on Mr. Kiwan that his relatives had difficulty recognizing him. The source argues that such acts of torture and inhuman and degrading treatment are widely practised in Kuwait. As a result of such treatment, Mr. Kiwan reportedly suffers from post-traumatic stress disorder and has been seeing a psychoanalyst since May 2018.

61. It is added that the secret services routinely violate the prohibition of torture and international norms relating to fair trial rights, which, the source explains, constituted one of the reasons for the refusal of the Spanish courts to extradite Mr. Kiwan to Kuwait.¹⁸

62. It is further recalled that in 2016, the Committee against Torture expressed concern that under the Penal Code of Kuwait, torture was considered a separate offence and treated

¹⁴ Spanish Chamber of Criminal Cases, section II, order No. 4/2020, 13 February 2020, p. 6.

¹⁵ Opinion No. 82/2019, para. 86.

¹⁶ General Assembly resolution 68/156, para. 27; [A/54/426](#), para. 42; and [A/HRC/13/39/Add.5](#), para. 156.

¹⁷ [A/54/44](#), para. 182 (a).

¹⁸ Spanish Chamber of Criminal Cases, section II, order No. 4/2020, 13 February 2020, p. 9.

as a minor offence with a disproportionately low maximum penalty of five years' imprisonment. It therefore recommended that the legislation be revised to criminalize acts of torture and punish them in proportion to their gravity.¹⁹

63. According to the source, there are consistent reports of physical and psychological torture and ill-treatment by the police and the security forces, in violation of article 159 of the Criminal Code, particularly during the prolonged detention of individuals allegedly linked to terrorist activities. Such reports are often not adequately investigated and punished. The source recalls the expressed concern of the Committee against Torture regarding the use of coerced confessions in courts, even after medical examinations confirm the signs of torture, and rejection by the courts of requests for independent medical examinations.²⁰

64. Allegedly, Kuwait failed to implement any of the recommendations of the Committee against Torture and in March 2020, was again called on to take preventive measures against the use of torture, investigate all allegations of torture and adopt the necessary measures to ensure that acts of torture are defined as crimes with penalties proportional to the seriousness of such offences.²¹

65. The source concludes that the authorities violated article 10 (1) of the Covenant and article 11 of the Convention against torture.

Response from the Government

66. On 5 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 3 February 2023, detailed information about the current situation of Mr. Kiwan and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Kuwait under international human rights law and in particular with regard to the treaties ratified by the State.

67. On 2 February 2023, the Government submitted its reply, denying that Mr. Kiwan had been detained without any legal basis and explaining that he had been arrested pursuant to a judgment handed down in his presence on 1 November 2017 sentencing him to five years' imprisonment with hard labour, deportation from the country and confiscation of forged documents, alongside other defendants. The case reportedly concerned the forgery of official and business documents. The judgment was upheld on appeal and on 21 September 2020, the Court of Cassation dismissed Mr. Kiwan's appeal.

68. The Government notes that Mr. Kiwan was released on bail on 2 April 2017 contrary to the source's allegation that he was notified of his transfer to the central prison on 19 December 2017, driven home and given 48 hours to collect his belongings before being taken to prison.

69. Similarly, the Government denies that Mr. Kiwan was detained anywhere other than at a location designated for detention, or that he was subjected to inhumane treatment. According to the Government, while detained, he benefited from all the rights enshrined in the Prisons Regulation Act No. 26 of 1962 and the implementing regulations promulgated in resolution No. 25 of 1976, which the Government deems consistent with all relevant international treaties, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Government notes that the authorities provide for the full supervision and control of all detainees without exception and members of the Public Prosecution Service conduct unannounced inspections.

70. The Government argues that the source's acknowledgment that Mr. Kiwan was permitted to contact a family member confirms that he was not prevented from contacting his family.

71. The Government further explains that Mr. Kiwan was sentenced in absentia:

¹⁹ CAT/C/KWT/CO/3, para. 9.

²⁰ CAT/C/KWT/CO/3, para. 20.

²¹ A/HRC/44/17, paras. 157.134, 157.135 and 157.142.

(a) On 26 December 2017, to seven years' imprisonment with hard labour, deportation from the country after serving his sentence and the confiscation of forged documents in a case concerning the forgery of official and business documents;

(b) On 19 June 2018, to seven years' imprisonment with hard labour, alongside another defendant reportedly sentenced to three years' imprisonment, the confiscation of forged documents and their deportation from the country after serving their sentences in a case concerning the forgery of official, business and bank documents, and participation in the forgery and use of documents without legal force. On 18 December 2018, the Appeal Court reportedly amended the judgment and reduced Mr. Kiwan's sentence to a term of imprisonment of two years and six months with hard labour, upholding the remainder of the judgment. The Court of Cassation rejected Mr. Kiwan's appeal on 22 April 2019;

(c) On 28 March 2019, to 10 years' imprisonment with hard labour, a fine of KD 10,000 and deportation from the country once the sentence was served in a case concerning the alleged smuggling and illegal entrance into Iraq of Mr. Kiwan after he was sentenced in 2017, despite the two travel bans reportedly issued against him on 1 August and 16 November 2017. The Appeal Court reportedly lowered his sentence to a term of five years with hard labour and a fine of KD 10,000. On 10 September 2020, the Court of Cassation dismissed Mr. Kiwan's appeal against the judgment of the Appeal Court on the merits.

72. On 30 January 2019, Mr. Kiwan was reportedly acquitted in another case concerning alleged fraud. The Appeal Court upheld the judgment on 24 November 2020.

73. The Government notes that there are numerous precedents relating to Mr. Kiwan and forgery, as evidenced by the number of convictions against him. It recalls that forgery of official or business documents is criminalized under national law.

74. Further, the Government argues that the judiciary is an independent authority, known for its competence and integrity, and acts in an impartial and independent manner, in accordance with the Constitution. As evidence, the Government submits that on 20 December 2017, the Public Prosecution Service withheld one of the charges against Mr. Kiwan and rejected the suspicion of forgery of an official document.

75. The Government explains that on 31 May 2020, the Public Prosecution Service received a communication alleging money-laundering by Mr. Kiwan's business partner, a member of the ruling family, and others, including Mr. Kiwan. The Public Prosecution Service reportedly launched an investigation and instituted criminal proceedings on 15 August 2022 on charges of money-laundering, forgery of business documents and undermining the national interests of the country. According to the Government, legal proceedings are ongoing, which contradicts the source's allegations against the judiciary.

76. The Government rejects the allegations, according to which the Public Prosecution Service instituted proceedings against Mr. Kiwan four days after filing the complaint, even though the normal procedure takes two months for referral from the General Consultation Bureau to the Bureau for the Handling of Complaints, before forwarding to the relevant Public Prosecutor's Office for registration and to the Directorate of Prosecutions. The Government challenges the existence of such bodies in Kuwait.

77. According to the Government, Mr. Kiwan was notified of his trial dates, in accordance with article 122 of the Code of Criminal Procedure, which provides notification guarantees and allows the court to judge the case in the person's absence if it is convinced that the persistent failure of the accused to attend is based on an unacceptable pretext and considers it unnecessary to issue an arrest warrant, or if it is convinced that the accused is a fugitive and is unlikely to be arrested within an appropriate time limit.

78. The Government notes that Mr. Kiwan fled Kuwait illegally and of his own free will, and was able to challenge the judgments against him up to the Court of Cassation, in accordance with articles 187 and 199 of the Code of Criminal Procedure. The Government therefore denies that Mr. Kiwan was not provided with an opportunity to be heard by an independent and impartial court and was sentenced in absentia without a significant defence.

79. Further, the Government explains that judicial chambers are composed automatically, using modern technology, and taking into account the linkage to other cases involving the

same individual who has been heard in the same court. The Court of Cassation reportedly monitors the procedure and the validity of the formation of the court, as well as the competence of the judges. Where a violation is found, legal proceedings are deemed null and void.

80. Regarding the allegations that the court failed to hear Mr. Kiwan's defence counsel, the Government recalls that article 120 of the Code of Criminal Procedure requires the presence of the lawyer of any person accused of a serious offence. In a decision of 27 March 2000, the Court of Cassation stated that judicial proceedings should be declared null and void if the defence pleas were formal, truncated and failed to achieve the purpose for which the presence of a lawyer was legally required.

81. The Government argues that Mr. Kiwan appointed a lawyer and was investigated by the Public Prosecution Service in the presence of his lawyer. It denies that Mr. Kiwan was not informed of the charges against him or the grounds for his arrest, that his statements were not heard or that his defence pleas were not recorded. The Government contends that his rights to a defence were fulfilled in accordance with the law.

82. Similarly, the Government denies all acts of intimidation against his lawyer, which it claims are prohibited by the Code of Criminal Procedure and grounds for declaring the proceedings null and void.

83. Further, the Government submits that its extradition request to the Spanish judiciary was legitimate and in accordance with the enforceable criminal judgment against Mr. Kiwan. With regard to the content of the communication of the International Criminal Police Organization (INTERPOL) concerning the refusal of the Spanish judiciary to extradite Mr. Kiwan due to the penalties imposed, which were deemed a "degrading punishment" and the sentence "inhumane", the Government assumes that an inaccurate translation of the request of the Public Prosecution Service of Kuwait was reflected in the ruling. The Government submits that the penalties imposed by domestic courts are prescribed by the Criminal Code and consistent with all international treaties ratified by the State.

84. The Government argues that the imposition of a penalty is an entirely objective issue and is subject to the absolute discretion of the court, based on what it deems appropriate, given the facts and circumstances of the case. It adds that a court is not queried about the penalty it imposes unless it violates the applicable legal provisions.

85. Finally, the Government argues that the cases in question have been adjudicated by the judiciary, which enjoys complete independence, in accordance with the Constitution. It considers the allegations made against it unreasonable and devoid of evidence. It recalls that article 34 (1) of the Constitution provides that an accused is presumed innocent until proven guilty in a trial that ensures the necessary guarantees for the exercise of the right to a defence.

Further comments from the source

86. The Government's reply was sent to the source on 6 February 2023 for further comments, which it submitted on 21 February 2023.

87. According to the source, the Government's reply is limited to a description of the justice system, which it considers insufficient to refute its allegations. The source notes the Government's refusal to acknowledge that the judiciary of at least two other countries have recognized the political nature of the proceedings against Mr. Kiwan and the breach of his fundamental rights. Reportedly, the Commission for the Control of INTERPOL's Files recently stated that Mr. Kiwan's extradition was refused based on the political nature of the case, because there was no guarantee of the possibility of a retrial and because the sentence was considered inhuman and degrading.

88. The source notes that the mere fact that Mr. Kiwan was tried and convicted does not dispel risks of arbitrary detention, particularly given the persistent human rights violations that existed prior to his detention and which persist today.

89. Regarding the alleged ongoing procedure on charges of money-laundering, the source observes that an alleged investigation is insufficient to prove the independence and impartiality of the judiciary, given that there has been no decision to date and that the member

of the ruling family who is implicated in the case may be acquitted. It considers that the fact that Mr. Kiwan is also a defendant in that investigation demonstrates the judicial harassment of him by the ruling family. The source argues that he is once again wrongly accused in proceedings he tried to initiate himself and notes that, in connection with these proceedings, Mr. Kiwan has recently been in contact with another Government to act as a whistle-blower for its anti-corruption commission.

90. The source also contends that Mr. Kiwan had to flee the country to preserve his physical integrity after he faced degrading and inhuman treatment for several weeks. It notes the Government's failure to rebut the allegations of torture against Mr. Kiwan and of reprisals against his lawyer and family.

91. The source recalls that the Spanish authorities confirmed that the judgments of Mr. Kiwan in absentia, without any evidence that he was represented by a lawyer and without any opportunity to effectively appeal those decisions, constituted a clear violation of his fair trial rights. Reportedly, the Spanish judiciary noted that the sentence against Mr. Kiwan, which condemned him to forced labour but stated that his physical integrity would be preserved, proved that he would have been subjected to inhuman and degrading treatment if his extradition had been granted.

92. The source argues that the Government's failure to provide any of the judgments against Mr. Kiwan and its theoretical and general statements are insufficient to rebut its claims.

Discussion

93. The Working Group thanks the source and the Government for their submissions.

94. In determining whether a person's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for a breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.²² Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²³

95. The source has argued that the detention of Mr. Kiwan from 2 November to 20 December 2017 was arbitrary under categories I and III of the Working Group. The Working Group shall proceed to examine the allegations in turn.

Category I

96. According to the source, Mr. Kiwan was arrested by six officers on 2 November 2017, on the premises of his company, without being shown an arrest warrant or informed of the reasons for the arrest, despite him having asked for such reasons. The Government alleges that Mr. Kiwan was arrested pursuant to a judgment of 1 November 2017, sentencing him to five years' imprisonment with hard labour, deportation from the country and confiscation of forged documents.

97. International law concerning the right to personal liberty includes the right to be shown an arrest warrant or judicial order in cases that do not involve arrests made in flagrante delicto, as well as the right to be informed at the time of arrest of the reasons for the arrest.²⁴ That is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

98. While the Government denies the source's allegations by submitting that Mr. Kiwan was arrested pursuant to the judgment of 1 November 2017 against him, it also submits that Mr. Kiwan was released on bail on 2 April 2017. It provides no details as to the circumstances

²² A/HRC/19/57, para. 68.

²³ Ibid.

²⁴ Human Rights Committee, general comment No. 35 (2014), para. 24.

of Mr. Kiwan's arrest pursuant to the judgment of 1 November 2017 and does not specifically deny that he was not shown an arrest warrant or judicial order, nor had the reasons for his arrest explained to him at the time of his arrest. In these circumstances, the Working Group is inclined to accept the allegations of the source that Mr. Kiwan was arrested on the premises of his company on 2 November 2017 without being shown an arrest warrant or detention order and without being informed of the reasons for his arrest, despite having asked for such reasons.

99. The Working Group considers that the mere existence of a judgment against Mr. Kiwan does not absolve the authorities of their obligations to present him with a document ordering his detention and to inform him of the reasons for his arrest at the time of the arrest. The Working Group concludes that the Government violated Mr. Kiwan's rights under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant and acted contrary to principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

100. The Working Group observes from the parties' submissions that proceedings against Mr. Kiwan were ongoing in relation to multiple cases. The source submits that following his arrest on 2 November 2017, Mr. Kiwan was detained on the premises of the secret services until 20 December 2017, during which time he was regularly interrogated under torture and was reportedly not told of the reasons for his detention. Instead, he was reportedly told by the secret services that they were awaiting orders from the royal family and that they might execute him.

101. To refute these allegations, the Government merely provides general statements that it acted pursuant to national laws and regulations, which it deems consistent with all relevant international treaties. The Government provides no detailed account as to the whereabouts of Mr. Kiwan from 2 November to 20 December 2017, merely denying that he was held on the premises of the secret services and alleging that he was released on bail on 2 April 2017. Notably, the Government does not provide any detail as to when Mr. Kiwan was arrested in relation to the judgment dated 1 November 2017, nor when he was transferred to the central prison.

102. The Working Group considers that such a broad and unspecific response is insufficient to rebut the source's allegations that Mr. Kiwan was detained in an unofficial place of detention from 2 November to 20 December 2017.

103. No jurisdiction should allow for individuals to be deprived of their liberty in secret and outside the reach of the law without the possibility of resorting to legal procedures.²⁵ The Human Rights Council has stressed that no one should be held in secret detention, and has called upon States to investigate all alleged cases of secret detention.²⁶ Furthermore, the Human Rights Committee has stated that secret detention, which prevents a detainee from being brought promptly before a judicial authority and not a prosecutorial one, constitutes a violation of article 9 (3) of the Covenant in itself. In addition, international standards prescribe that the arrested person be brought before a judge within 48 hours.²⁷ The Working Group finds that in detaining Mr. Kiwan in a secret location for almost 50 days, without bringing him before a judicial authority, the Government violated article 9 (3) of the Covenant.

104. The source further alleges that Mr. Kiwan was unable to communicate with anyone during the first week of his detention. The Government denies that Mr. Kiwan was deprived of contacts with the outside world by pointing to the source's statement that he was able to call a member of his family. However, it does not contest the allegation that the phone call only occurred after Mr. Kiwan had already been detained for one week.

105. In the light of the above, the Working Group concludes that Mr. Kiwan was detained incommunicado for the first week of his detention on the premises of the secret services. As

²⁵ A/HRC/16/47, para. 54.

²⁶ Human Rights Council resolution 37/3, paras. 8–9.

²⁷ See opinions No. 57/2016, paras. 110–111; No. 83/2018, para.47; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 82/2019, para. 76; and No. 34/2020, para. 51. See also general comment No. 35 (2014), para. 33.

the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.²⁸ Judicial oversight of detention is a fundamental safeguard of personal liberty²⁹ and is essential in ensuring that detention has a legal basis. Given that Mr. Kiwan was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

106. For the foregoing reasons, the Working Group finds that the arrest and detention of Mr. Kiwan were arbitrary under category I.

Category III

107. The source contends that the domestic courts excluded evidence produced by Mr. Kiwan from the beginning of the proceedings and did not consider exculpatory evidence. Mr. Kiwan was reportedly convicted despite the evidence presented attesting that the meeting of the board of directors of the Kuwait United Company for Advertising, Publishing and Distribution was not a forgery. Reportedly, the Court of Appeal tried Mr. Kiwan in absentia and made no mention of the defence or the evidence it submitted.

108. Once again, the Working Group notes the Government's general denial of these allegations and mere assertion that Mr. Kiwan's right to be heard was guaranteed and that his rights to a defence were fulfilled in accordance with the law. The Government further argues that Mr. Kiwan is able to challenge the judgments against him and to lodge an appeal, in accordance with articles 187 and 199 of the Code of Criminal Procedure.

109. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.³⁰ It is outside the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by domestic courts.³¹

110. However, the source has also submitted that following his arrest on 2 November 2017, Mr. Kiwan was held on the premises of the secret services until 20 December 2017, during which he was repeatedly interrogated without a lawyer being present. Reportedly, when Mr. Kiwan asked to have access to a lawyer, the officers interrogating him laughed and said he was in the house of the royal family where he had no rights.

111. In rebutting these allegations, the Government merely states that article 120 of the Code of Criminal Procedure protects the right to legal assistance and that in a judgment of 27 March 2000, the Court of Cassation affirmed that judicial proceedings should be declared null and void if the defence pleas were formal and truncated and failed to achieve the purpose for which the presence of a defence lawyer was required by law. The Government adds that Mr. Kiwan's claims are unfounded, that he appointed a lawyer and was investigated in the presence of the lawyer and that his rights to a defence were fully guaranteed.

112. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.³²

²⁸ See opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019, No. 15/2020, No. 36/2020 and No. 59/2022.

²⁹ [A/HRC/30/37](#), para. 3.

³⁰ See opinions No. 49/2019, No. 58/2019, No. 60/2019, No. 5/2021 and No. 33/2021.

³¹ See, for example, opinions No. 15/2017, No. 16/2017, No. 49/2019, No. 58/2019, No. 60/2019 and No. 5/2021.

³² [A/HRC/45/16](#), paras. 51–53, and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

Legal assistance should be available at all stages of criminal proceedings to ensure compliance with article 14 (3) (d) of the Covenant.³³

113. The Working Group notes that the Government has only provided general statements that domestic law protects the right to legal assistance and that the source's allegations are unfounded. It has not provided any specificities or details to support its claims as applied to Mr. Kiwan's case. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.³⁴ The Working Group therefore considers that the source has established a prima facie case, insufficiently rebutted by the Government, that Mr. Kiwan was denied his right to legal assistance, in violation of article 14 of the Covenant.

114. The Working Group is particularly concerned over the source's allegations that between September 2016 and November 2017, Mr. Kiwan's lawyers were pressured by the authorities to stop representing him and withdrew from his case. According to the source, on 11 March 2019, two of Mr. Kiwan's lawyers were prosecuted and sentenced to three months' imprisonment and a fine, without legal representation, on the grounds that they had damaged the name and reputation of a member of the royal family due to the publication of a press release recounting the lawsuits against Mr. Kiwan. The Government merely replies that acts of intimidation against lawyers are prohibited by the Code of Criminal Procedure and are grounds for declaring the proceedings null and void.

115. The Working Group recalls that such acts against lawyers are entirely unacceptable and violate articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant.³⁵ It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide a remedy whenever a violation occurs.³⁶ Principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court provides that legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.³⁷ The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

116. The source also submits that during his questioning by the secret services, Mr. Kiwan was kept blindfolded and handcuffed to a chair, beaten, slapped, insulted and humiliated, in order to force him to disclose his professional and private passwords. The answers were reportedly used by the prosecution against Mr. Kiwan during his appeal against the judgment of 1 November 2017 and before the Court of Cassation.

117. In its reply, the Government does not specifically rebut these allegations, apart from stating that the allegations of inhuman treatment are unreasonable and that Mr. Kiwan was accorded all the rights enshrined in the Prisons Regulation Act No. 26 of 1962 and the implementing regulations promulgated in resolution No. 25 of 1976, which it deems consistent with international law.

118. The Working Group notes the source's allegations that both the Emirati and Spanish judiciaries rejected the extradition requests made by Kuwait. The source alleges that the fact that Mr. Kiwan was arrested by the Kuwaiti secret services, who allegedly routinely violate the prohibition of torture and the international norms relating to fair trial rights, constituted one of the reasons for the refusal of the Spanish courts to extradite Mr. Kiwan.³⁸ In response, the Government merely states that it assumes that an inaccurate translation of the request of the Public Prosecution Service of Kuwait was reflected in the ruling by the Spanish judiciary.

119. The Working Group considers that the source has established a prima facie case, insufficiently rebutted by the Government, that Mr. Kiwan was subjected to treatment

³³ [CCPR/C/75/D/852/1999](#), para. 7.5.

³⁴ *Ibid.*

³⁵ Opinions No. 14/2017, No. 28/2018, No. 66/2019, No. 42/2020 and No. 67/2020. See also [A/HRC/45/16](#), para. 54.

³⁶ See deliberation No. 10 ([A/HRC/45/16](#), annex I).

³⁷ See also the Basic Principles on the Role of Lawyers, paras. 16–22.

³⁸ Spanish Chamber of Criminal Cases, section II, order No. 4/2020, 13 February 2020, p. 9.

contrary to the absolute prohibition of torture, which is a peremptory norm of international law, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and to rule 1 of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

120. The Working Group recalls that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.³⁹ Further, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.⁴⁰ The burden is on the Government to prove that statements were given freely.⁴¹ The Working Group considers that the Government's general denial of the source's allegations does not suffice to discharge its burden.

121. The Working Group thus finds that the authorities violated Mr. Kiwan's right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and his right to a fair trial under article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights.

122. The source also submits that Mr. Kiwan did not benefit from the right to be heard before an independent and impartial tribunal, as the judgment of 1 November 2017 was politically motivated and rendered by an inefficient court lacking independence. In that regard, the source underlines the concern of the Human Rights Committee regarding the insufficient independence of the judiciary from the executive branch and the refusal of the Spanish judiciary to extradite Mr. Kiwan on the basis, *inter alia*, of the risk of his being persecuted by high authorities. Additionally, the source notes that three out of the five judgments against Mr. Kiwan (on 1 November 2017, 19 June 2018 and 28 March 2019) were issued by the same judges.

123. In its response, the Government denies these claims and argues that the judiciary enjoys complete independence, in accordance with the Constitution. It adds that judicial chambers are composed automatically by means of technology, taking into account the linkage to other cases involving the same accused that have been heard in the same court. The Government further submits that the Court of Cassation monitors the validity of the composition of judicial chambers and the competence of the judges.

124. The Working Group reiterates that the right to be tried by a competent, independent and impartial tribunal, protected under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, is a core fair trial right. That right is absolute and admits no exception.⁴² The Working Group further notes that the Human Rights Committee found that the judiciary of Kuwait is not sufficiently independent of the executive branch in such matters as the appointment, promotion and disciplining of judges, and recommended that the Government ensure the independence, autonomy and impartiality of the judiciary by reforming the system for the appointment, promotion and disciplining of judges and the security of tenure of foreign judges.⁴³

125. The Working Group notes that the Government has not specifically denied the allegations that the same judges were involved in three of the five judgments against Mr. Kiwan. The Working Group observes that two of these judgments related to similar charges, namely the forgery of various documents (judgments of 1 November 2017 and 19 June 2018) while one concerned unrelated charges of illegal entrance into Iraq (judgment of 28 March 2019). The Working Group also notes the un rebutted allegations of the source that two of

³⁹ [A/HRC/45/16](#), para. 53. See also [E/CN.4/2003/68](#), para. 26 (e), and opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91.

⁴⁰ See opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

⁴¹ Human Rights Committee, general comment No. 32, para. 41.

⁴² *Ibid.*, para. 19.

⁴³ [CCPR/C/KWT/CO/3](#), paras. 30–31.

Mr. Kiwan's lawyers were prosecuted and sentenced to three months' imprisonment and a fine on the grounds that they had damaged the name and reputation of a member of the royal family merely because they had issued a press release recounting the lawsuits against Mr. Kiwan.

126. The Working Group considers that these allegations are bolstered by the finding of the Spanish judiciary regarding the insufficiency of the independence of the Kuwaiti judiciary and the number of proceedings initiated at the request of high authorities in the executive against Mr. Kiwan and multiple individuals around him.

127. The Working Group finds that Mr. Kiwan was deprived of his right to be heard by an independent and impartial tribunal, in violation of article 14 of the Covenant.

128. In light of the above, the Working Group concludes that the violations of Mr. Kiwan's rights to a fair trial were of such gravity as to render his detention arbitrary under category III.

Concluding remarks

129. The Working Group wishes to record its grave concern about the source's allegations of reprisals against members of Mr. Kiwan's family and entourage. It notes the specific allegation that, in retaliation against Mr. Kiwan, the authorities filed a case against several members of his family and entourage who were then arrested and tortured to reveal the name of the person who had helped Mr. Kiwan to escape. Reportedly, once the name was revealed, that individual went missing. Additionally, two of Mr. Kiwan's family members were allegedly arrested and detained until October 2020. The Working Group is alarmed at the Government's silence in relation to these serious allegations. It reminds the Government of its obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty and security of person.⁴⁴ The Working Group also urges the Government to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, in accordance with article 10 of the Covenant and principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group refers the present case to the Working Group on Enforced and Involuntary Disappearances.

130. Finally, the Working Group is concerned about the source's allegations that the royal family used the State apparatus to dismiss Mr. Kiwan from the Al Waseet International group and use it for large-scale financial embezzlement. In effect, the judgments against Mr. Kiwan ordering his expulsion from Kuwait implied the successful expropriation of Mr. Kiwan's interests in the group. The Working Group observes that the Government has not specifically rebutted these allegations and wishes to emphasize that, if true, these allegations may amount to a violation of Mr. Kiwan's right not to be arbitrarily deprived of his property under article 17 of the Universal Declaration of Human Rights.

Disposition

131. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Bachar Kiwan being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, was arbitrary and falls under categories I and III.

132. The Working Group requests the Government of Kuwait to take the steps necessary to remedy the situation of Mr. Kiwan without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

⁴⁴ See General Assembly resolution 72/180 and Human Rights Council resolutions 41/2 and 41/17. See also Commission on Human Rights resolutions 1991/42 and 1997/50, Human Rights Council resolutions 6/4 and 10/9 and opinions No. 41/2014, para. 24; No. 42/2019, para. 43; No. 13/2020, para. 39; and No. 32/2020, para. 29.

133. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Kiwan an enforceable right to compensation and other reparations, in accordance with international law.

134. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Kiwan and to take appropriate measures against those responsible for the violation of his rights.

135. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action, and the Working Group on Enforced and Involuntary Disappearances.

136. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

137. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Kiwan;
- (b) Whether an investigation has been conducted into the violation of Mr. Kiwan's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kuwait with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

138. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

139. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

140. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴⁵

[Adopted on 4 April 2023]

⁴⁵ See Human Rights Council resolution 51/8, paras. 6 and 9.