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to the United Nations
Convention against Corruption**

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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Kuwait

1. Introduction

1.1. Overview of the legal and institutional framework of Kuwait

Kuwait adopted the United Nations Convention against Corruption on 9 December 2003, and ratified the Convention in accordance with Law No. 47 of 2006. Under Article 70 of the Kuwaiti Constitution, ratified treaties “shall have the force of law” from the date of ratification and promulgation. Under Article 70, international agreements have the same legal force as domestic legislation.

The Constitution of 1962 is the supreme law of Kuwait. Law No. 23 of 1990 lays down the judicial system of Kuwait. There is a Court of Cassation, the highest court in the country, a Court of Appeal, and first instance courts. Public prosecutors under the direction of the Prosecutor General handle the investigation and prosecution of felonies and some misdemeanours. Judges and public prosecutors enjoy complete independence.

Kuwait has several mechanisms and bodies that specialize in combating corruption offences, misuse of public funds and other similar matters. Legislation is currently under discussion in Parliament to establish a national anti-corruption agency with all the powers and authority required to engage in the prevention, detection and investigation of corruption offences.

The Public Prosecution

The public prosecution brings prosecutions on behalf of society, supervises the judicial police, enforces the criminal law, conducts the judicial investigation in criminal cases and executes judgements in accordance with the powers bestowed on it by Article 167 of the Kuwaiti Constitution.

The Audit Bureau

Administers and organizes audit mechanisms, including oversight of the performance of state administrative units and agencies.

Governmental Performance Monitoring Agency

Studies the annual reports of the Audit Bureau, proposes the necessary mechanisms to fine-tune performance and submits recommendations to address any observations, working in accordance with the powers bestowed upon it under Article 2 of Decree No. 346/2007. In addition to those tasks, it coordinates with ministers and assists them in monitoring and inspecting the performance of their ministries and the government agencies under their authority.

National Assembly Standing Committee for the Protection of Public Funds

This committee, formed under Article 8 of the Law to protect public funds No. 1/93, is empowered, among other things, to study the reports of the Audit Bureau on the money used by governmental agencies — at home and abroad — and money

allocated to those agencies that has not been used. The Committee may, on the recommendation of Parliament, investigate cases of misuse of public funds.

The Civil Service Commission

Royal Decree No. 10 of 1960 established the Civil Service Commission as an independent body with powers that include supervision of the implementation of laws and regulations on public employment. In addition, Decree No. 10 of 2002 gave it powers to appoint employment inspectors in ministries and governmental bodies to monitor administrative decisions before and after they are published.

Ministry of Finance Financial Oversight Division

Ministerial Decree 57 of 2006 established an independent division in the Ministry of Finance with responsibility for financial oversight. The tasks of the division include drafting rules for financial inspectors and account managers, and providing technical guidance on approval procedures for accounting transactions and transfers. The Central Bank also has a Financial Investigation Unit.

National Committee to Combat Money-Laundering and the Financing of Terrorism

A committee has been formed to combat money-laundering and the financing of terrorism. It includes representatives of the Ministries of Justice, Finance, Trade and Industry, Social Affairs, Employment, Foreign Affairs, and the Interior, as well as of the Central Bank of Kuwait, the General Customs Directorate and the Kuwait Stock Exchange. The committee's mandate includes proposing necessary training programmes, increasing awareness of the importance of combating money-laundering and the financing of terrorism, and coordinating the work of members of the committee and other bodies.

Central Tenders Committee

The Central Tenders Committee regulates and oversees public tenders and applies and monitors the principles of transparency and equality in accordance with the conditions contained in public state tenders.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the application of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Articles 35 and 38 of Law No. 31 of 1970, amending the Criminal Code No. 16 of 1960, make it an offence for a public official to ask for or accept, for himself or for a third party, any promise or gift in return for performing or facilitating any of the activities of the agency in which he works. The law criminalizes both the person offering the bribe and the person receiving it. This law applies regardless of whether the act for which the bribe was given was actually performed and irrespective of the magnitude of the influence or the authority of the public official who is the recipient of the bribe. Article 41 makes bribery a criminal offence even if the public official does not accept the bribe. Article 41 contains a broad definition of "public official", considering all public employees of the State and local councils, and members of organizations and associations funded fully or in part by the Government to be

public officials. Kuwaiti law does not as yet determine its position on bribes offered to foreign public officials, however.

Articles 37 and 41 of Law No. 31 of 1997, amending certain provisions of the Criminal Code, criminalizes trading in influence, whether actively or passively, which is in line with the requirements of the United Nations Convention against Corruption (UNCAC). This involves the use of influence or authority to do something or to abstain from doing it and does not require actual use of influence or the achievement of the desired results to, nor does it require that the public official actually has the authority to perform the act requested.

On the other hand, Kuwait has not adopted legislation addressing or criminalizing bribery in the private sector.

Money-laundering (articles 23, 24)

Kuwait has adopted comprehensive laws addressing and criminalizing money-laundering in accordance with Law No. 35 of 2002. Money-laundering operations are defined in Article 2 of that Law as: (a) undertaking money-laundering operations with the knowledge that those funds are derived from a criminal act; (b) transporting, transferring, possessing, acquiring, using, holding, or receiving monies with prior knowledge that they were derived from a criminal act; and (c) concealing the facts regarding such monies or their source, movement or ownership with prior knowledge that they were derived from criminal activities. The scope of these two articles extends to proceeds that have been converted into other property. Money-laundering offences incur prison sentences of a maximum of seven years and a minimum fine of half the amount of money laundered, but the maximum fine may not exceed the total amount of money laundered. Furthermore, the laundered money may also be confiscated, taking into account the rights of bona fide third parties. The definition of ownership includes both tangible and intangible property.

A conviction for money-laundering may result in a maximum sentence of seven years and a fine of at least half of the amount of money laundered, but not more than the total amount. In addition, all laundered money may be confiscated and forfeited, with due consideration for the rights of bona fide third parties.

Kuwait plans to submit copies of its money-laundering legislation officially to the Secretary-General of the United Nations in the near future.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Articles 9 and 10 of Law No. 1 of 1993 on Protection of Public Funds, criminalizes the intentional embezzlement of public money or misappropriation of papers or any effects placed in the custody of a public official. The maximum penalty is life imprisonment. In addition, Article 14 addresses negligence and gross negligence leading to the embezzlement of public funds or unlawful seizure of public property. The same article addresses abuse of official functions and also covers a wide range of unlawful practices resulting from a public employee exploiting his authority to carry out acts in his own interest or in the interest of others.

Although Kuwait has not specifically criminalized illicit enrichment, it is considered that such cases are addressed through the articles on bribery,

embezzlement and money-laundering, and by the articles of the Civil Code concerning the misappropriation of public property. The Kuwaiti Parliament is currently drafting legislation to criminalize illicit enrichment.

Obstruction of justice (article 25)

Article 138 of Law No. 16 of 1960 makes it an offence for any person to compel a witness not to testify or to give false testimony. Kuwait has not adopted any laws criminalizing bribing or offering an advantage to a witness to alter his testimony. Kuwait considers that Article 53 of the same law on accomplice liability covers such practices as it punishes accomplices for giving false testimony as a criminal act. There may be cases, however, where an affirmative criminal offence of inducing a witness to deliver false testimony would be useful, such as when a person attempts to bribe a witness, but the witness refuses the bribe.

Article 146 makes it an offence for any person to attempt, with criminal intent, by means of an order, request, threat or inducement to a judicial official, to incite him to adopt procedures contrary to law or to incite him to abstain from implementing legal procedures. Article 135 criminalizes such conduct and acts that hinder the enforcement of the law.

Liability of legal persons (article 26)

Article 12 of Law No. 35 of 2002 extends criminal liability to legal persons in relation to the offence of money-laundering. This article does not prejudice the criminal liability of natural persons who commit the same offence. Legal liability is not at present provided for in relation to other offences.

Participation and attempt (article 27)

Under article 45 of the Criminal Code No. 16 of 1960, Kuwaiti law criminalizes attempt and punishes principal perpetrators and associates who aid or incite, regardless of whether or not the crime has been completed. Articles 48 and 53 cover the commission of any offence by two or more persons. Article 56 of the Kuwaiti law also covers cases of criminal conspiracy.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

The Criminal Code No. 16 of 1960 requires a criminal sentence to be proportionate to the severity of the crime, allowing the judge to impose a suitable punishment bearing in mind the minimum and maximum punishments allowed by law.

Immunity from prosecution is addressed by Article 111 of the Constitution and laws pertaining to the judiciary and Parliament. In accordance with this article, certain public employees, including members of Parliament and ministers, may be given procedural immunity from investigation, prosecution or lawsuit. No investigative or legal procedure may be brought against them except with the agreement of Parliament. This also applies to public prosecutors and judges, who may not be investigated or held criminally liable except with the agreement of the High Council of Judges following a request by a public prosecutor.

Several provisions of Law No. 17 of 1960 on Preliminary Proceedings and Criminal Trials contain measures on the appearance of the defendant in court. These provisions contain procedures and methods of issuing a summons to appear before the court, require the necessary guarantees to be afforded to the defendant, give him a right of defence, as well as the consequences, necessary measures and penalties to be imposed on the defendant in the event of failure to appear.

Articles 87, 88 and 91 of the Criminal Code No. 16 of 1960 permit parole if the accused person has completed at least three quarters of the sentence. A person released early may be monitored before the specified period has elapsed in order to ensure compliance with the conditions of release, subject to renewed imprisonment if those conditions are violated. Articles 85-90 of the Law on Organization of Prisons, Law No. 26 of 1962, stipulate the need to rehabilitate prisoners and reintegrate them into society after the end of their sentence.

Kuwait law details situations in which public officials may be temporarily or permanently removed from office or suspended as a consequence of the commission of a range of crimes, including corruption offences. The laws that address these situations contain the possibility of suspending an official from public service during the period of investigation, pending the outcome of the criminal case. These laws do not, however, provide for the possibility of a convicted official returning to his post after serving his sentence. In addition, conviction for a felony bars any person from working in the public service or obtaining a public contract, while conviction for a misdemeanour bars people from working in the public service for from one to five years. With respect to convictions resulting from misdemeanours regarding honesty, including corruption offences, a person only becomes eligible for re-employment once sufficient rehabilitation has been demonstrated.

Under Article 27 of Decree-Law No. 15 of 1979, criminal accountability does not prevent public employees from being subject to disciplinary punishment.

Kuwaiti law encourages persons who participate in any criminal activity to provide useful information and to give every assistance they can to the law enforcement authorities. If such assistance is provided prior to investigation or commission of the offence, the prosecutor may grant the person immunity from prosecution in return for cooperation. A judge may take into account the circumstances of the offence, including the defendant's cooperation with the law enforcement authorities, when determining the appropriate punishment.

Protection of witnesses and reporting persons (articles 32, 33)

Kuwait has provisions that prohibit persons from torturing or forcing a witness or expert to alter testimony, imposing heavier penalties on public officials. Although there are no express provisions that facilitate protective measures for witnesses or victims, the presiding judge is given broad discretion to apply such measures.

In addition, the court has authority to apply procedural requirements to protect witnesses from irrelevant questions or attempts at intimidation, as well as the possibility of withholding a witness's identity, allowing testimony to be given via video link or other means, and ensuring that the victim's concerns are heard at relevant points in the criminal proceedings. Victims are treated as witnesses under Kuwaiti legislation.

The Parliament in Kuwait is currently considering legislation to provide protection to persons who report cases of corruption and witnesses from ill-treatment or reprisals.

There are currently some protective measures in cases concerning reporting of money-laundering offences, as well as in the public service laws in force.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Law No. 16 of 1960 provides measures for the freezing, seizing and confiscation of property or instruments associated with offences under the UNCAC. Article 78 empowers the court to issue an order for the confiscation of criminal property in all misdemeanour and felony cases.

Seizure and confiscation orders are executed without prejudice to the rights of bona fide third parties.

Articles 24 and 25 of Law No. 1 of 1993 contain provisions on money-laundering that authorize the public prosecution to identify, freeze and confiscate criminal assets. These powers extend to members of the immediate family of the person concerned.

Other legislation applies more broadly to permit the seizure of financial records and other materials to facilitate the identification and tracing of proceeds of crime.

Articles 24 and 28 of Law No. 1 of 1993 address procedures for dealing with goods and money which have been impounded, seized or confiscated. In addition, Article 28 renders invalid any transactions carried out with assets associated with the crimes of money-laundering and misuse of public money, without prejudice to the rights of bona fide third parties. In this case, forfeited property may be destroyed, sold or auctioned.

In Kuwait, all financial establishments and national organizations must present records of their financial and commercial transactions upon demand to one of the national institutions under whose supervision they are placed or legally governing such matters. Under Article 77 of the Code of Criminal Procedure, bank secrecy does not constitute legal grounds for refusing to comply.

Statute of limitations; criminal record (articles 29, 41)

Pursuant to Law No. 16 of 1990, the period of limitations for criminal proceedings for felonies is 10 years from the date of commission of the offence, and 5 years for misdemeanours. For criminal penalties, the period of limitation is 20 years for felonies (30 years for death sentences) and 10 years for misdemeanours. With regard to money-laundering, however, there is no period of limitations. However, Article 8 stipulates suspension of the limitation period, if the defendant fails to attend the criminal proceedings, which requires another arrest warrant to be issued.

Through mutual information exchange, Kuwait studies relevant criminal cases in other jurisdictions in criminal corruption proceedings, either at the investigation or sentencing stage.

Jurisdiction (article 42)

Article 11 of Law No. 16 of 1960 establishes jurisdiction over all criminal offences committed within the territory of Kuwait. This article also extends jurisdiction to persons outside Kuwait who commit an act or are an accessory to a crime committed within the territory of Kuwait.

Article 12 of the same law applies to cases involving any individual Kuwait refuses to extradite on the sole basis that the person is a national of Kuwait. In such cases, the person will be prosecuted in Kuwait.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Law No. 7 of 2008 on construction, servicing and transfer and similar operations, Decree 105 of 1980 on the State Property System, and Articles 2 and 3 of Law No. 25 of 1996 the disclosure of commissions paid in relation to contracts entered into by the State for the State, allow the State to cancel contracts if the other party commits any unlawful act, such as fraud or bribery.

These provisions permit confiscation of deposits paid and facilities erected as compensation due as a result of the cancellation. This extends to private contracts under relevant civil provisions.

Article 227 of Decree Law No. 67 of 1980 promulgating the Civil Code provides that any person who by his unlawful act causes damage to another shall compensate him for the damage caused, even if was unintentional.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

Kuwait has several specialized directorates working in the area of combating corruption and law enforcement, which are detailed above. Provisions to guarantee their investigative and operational independence have been incorporated into their enacting legislation.

All individuals and institutions are legally required to report crimes to the law enforcement authorities. Article 3 of Law No. 35 of 2002 on money-laundering facilitates and encourages the cooperation between individuals, financial institutions and the private sector to detect and report money-laundering.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Provisions to address cases of embezzlement of public funds and property by public officials, including intentional conduct, negligence and gross negligence.
- Regulation of the banking sector, with an emphasis on detection and prevention of money-laundering.
- Wide-ranging provisions to suspend or remove public officials suspected or accused of committing offences under the UNCAC, with severe consequences in the event of conviction.

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Continue progress on the development and implementation of the comprehensive anti-corruption strategy, including the establishment of an integrity commission or a similar anti-corruption body.
- Adopt legislation to make active bribery of foreign public officials a criminal offence. Consider adopting legislation to make passive bribery of foreign public officials a criminal offence.
- Consider adopting legislation to make bribery in the private sector a criminal offence in line with Article 21 of the UNCAC.
- Continue to consider the need for legislation to make illicit enrichment a criminal offence.
- Continue to extend the scope of the crime of obstruction of justice to include efforts to bribe or offer an advantage to witnesses in order to change their testimony.
- Consider extending the scope of liability of legal persons to other UNCAC offences to the extent consistent with the legal principles of Kuwait.
- Continue to consider appropriate measures to provide protection to persons who in good faith and on reasonable grounds report UNCAC offences to the competent authorities.

2.4. Technical assistance needs required to improve implementation of the Convention

- Good practices/lessons learned, and model legislation with regard to Articles 16 (bribery of foreign public officials), 21 (bribery in the private sector), 26 (liability of legal persons), 31(8) (freezing, seizure and confiscation), 32 (protection of witnesses, experts and victims) and 37 (cooperation with law enforcement authorities).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

In Kuwait extradition is mainly governed by bilateral agreements. Kuwait currently has several bilateral extradition treaties in force. It is also a party to several multilateral conventions that deal with the exchange of criminals. Kuwait has confirmed that it considers the UNCAC the legal basis for cooperation concerning offences under that Convention, although this has not yet been applied in practice.

The principle of double criminality is a key issue for extradition, which is applied flexibly so that extradition is possible where a similar offence exists under Kuwaiti law. An offence for which extradition is requested must be punishable by at least 12 months' imprisonment where the individual has yet to be tried or at least six months where the individual has already been sentenced. Subject to these

requirements, Kuwait is able to extradite for any criminal offence, including attempt, conspiracy, incitement or participation.

In order to request extradition, the requesting country must submit the relevant duly authenticated documentation or warrant for arrest or evidence of conviction or a court ruling, and a statement setting out the alleged conduct constituting the offence. The date and place of the commission of the acts, the legal description of the offences committed, a certified copy of the applicable law, and a summary of evidence against the person to be extradited must also be provided.

Where the request for extradition relates to a person not yet sentenced, the evidence must justify arrest and committal for trial had the offence been committed in Kuwait.

Extradition is refused for political offences. However, bilateral agreements between Kuwait and other States have narrowly defined what constitutes a political offence, specifically excluding offences within the scope of international conventions by which both States are bound. Consequently, extradition cannot be refused on this basis for UNCAC offences, nor can requests be refused on the ground that the offence involves financial matters.

Kuwait does not extradite its own nationals. Where such a request is made, the case will instead be submitted for prosecution to the competent domestic authorities, provided the act committed is also an offence under Kuwaiti law.

Where the extraditable offence was committed in Kuwaiti territory, a legal presumption exists that prosecution will be brought under Kuwaiti law in preference to extradition.

All procedural rights provided to Kuwaiti individuals are also provided to foreign nationals subject to extradition proceedings.

Where a Kuwaiti national is convicted and sentenced in a foreign jurisdiction, Kuwait will not enforce the sentence imposed by the foreign court. In such circumstances, a Kuwaiti court must retry the case and apply any consequent sanctions.

Due process is observed in all extradition cases. Bilateral agreements specify that an extradited person shall not be tried or punished except for the offence for which extradition was requested.

In exceptional cases, pre-trial detention is permitted under existing extradition treaties. Where Kuwait agrees to extradite, the normal procedure is to arrest and detain the person in order to ensure his appearance at extradition hearings, unless the requesting State declares that detention is not necessary prior to extradition.

Kuwait is bound by several mutual legal and judicial cooperation agreements relating to transfer of convicted persons, including with Iran, Egypt, Korea and Turkey. These agreements apply to those convicted of UNCAC offences as well as other criminal offences. Transfer of convicted persons is only possible where an international instrument is in force.

Mutual legal assistance (article 46)

Kuwait is party to several bilateral and multilateral agreements on mutual legal assistance. The bilateral agreement between Kuwait and India on Mutual Legal Assistance in criminal matters provides a broad basis for assistance in relation to criminal matters and meets all the requirements of the UNCAC. While there are few domestic provisions that address mutual legal assistance in Kuwait, bilateral and multilateral agreements have full legal status.

The Ministry of Justice is the central authority for mutual legal assistance in criminal matters, and processes requests in conformity with established procedures and evidentiary requirements.

Bank secrecy laws are not a barrier to the provision of mutual legal assistance by Kuwait, and it has stated that no request for bank or commercial documents by another State has ever been rejected on this basis.

Kuwait does not require double criminality in order to provide mutual legal assistance. The Ministry of Justice also provides assistance on a case-by-case basis in the absence of a treaty. Mutual legal assistance may be provided in the form of evidence via video conference from a court in Kuwait to a foreign court. Kuwait has highlighted a recent example of cooperation with the United Kingdom in this regard.

A request for extradition will be refused if granting the request would prejudice the sovereignty, security or national interest of Kuwait.

Where Kuwait is considering refusing a request, it is obliged, under bilateral agreements, to request further information and clarification from the requesting State with a view to facilitating the request before officially refusing it.

Information relating to criminal matters can be transmitted on an unofficial basis. Kuwait complies with foreign requests to keep information confidential, and will not use any material received from another State for the purposes of proceedings or investigation for any other purpose without the approval of the State that supplied the information. Through bilateral agreements, Kuwaiti law meets the standards of UNCAC Article 46(27) regarding safe conduct.

Generally, Kuwait will bear the ordinary and reasonable costs of executing a request. Bilateral agreements stipulate that each party will bear its own costs.

Although there is no domestic legislation on the transfer of criminal proceedings, there is no prohibition against such a transfer taking place, subject to authorization by the judicial authorities.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Law enforcement cooperation with foreign authorities is implemented through both the Ministry of Interior and the Public Prosecutor's Office on the basis of bilateral assistance agreements, the Interpol network and on a case-by-case basis. Aside from a limited legal basis for mutual legal assistance under money-laundering legislation, no detailed domestic framework for the provision of law enforcement cooperation exists. This does not, however, appear to have prevented Kuwait from providing such cooperation in practice.

Although there are no specific domestic legislative provisions designed to facilitate the establishment of joint investigations between law enforcement authorities or examples of such joint investigations having taken place, there is no prohibition on the establishment of such joint cooperation if necessary for a specific investigation.

Kuwait uses special investigation techniques in both domestic investigations and international cooperation. Where such techniques are to be used as part of cooperation with a foreign law enforcement agency, an agreement must first be in place between the two agencies, and authorization must be given by the Public Prosecutor's Office. The Criminal Code stipulates that such techniques must not affect the rights of individuals.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the UNCAC:

- Kuwait's most recent bilateral agreements, both in relation to extradition and mutual legal assistance, provide a comprehensive framework for cooperation in line with the UNCAC.
- Kuwait offers a broad framework of bilateral legal assistance when extradition and legal assistance are requested, without insisting on the condition of double criminality.
- Kuwait takes a broad and flexible approach to the issue of double criminality in relation to extradition proceedings.
- Kuwait provides expedited assistance to States requesting its assistance regarding extradition and mutual legal assistance, making use of international networks such as Interpol.

3.3. Challenges facing Kuwait in implementation of the UNCAC

The following points could serve as a framework to strengthen and consolidate the actions taken by Kuwait to combat corruption:

- Continue to review existing bilateral agreements on extradition and on bilateral legal cooperation adopted prior to Kuwait's ratification of the UNCAC in order to ensure that they reflect the requirements and standards of the Convention.
- Continue with efforts aimed at developing a comprehensive national legal framework in relation to the extradition of offenders and mutual legal assistance agreements, as well as strengthening frameworks for international cooperation in relation to law enforcement.

3.4. Technical assistance required to ensure proper application of the United Nations Convention against Corruption

- Application of the good practices/lessons learned with regard to Article 44(2) (Extradition) and Article 47 (Transfer of criminal proceedings).